

No. 16374

✓ SEE ALSO

United States  
Court of Appeals  
for the Ninth Circuit

3107

PACIFIC TOW BOAT COMPANY, E. W.  
STUCHELL, WILLIAM D. CARPENTER,  
HARRY W. STUCHELL, JR.; M. A. WY-  
MAN, D. E. WYMAN and M. H. WYMAN,  
Co-Partners Doing Business as Eclipse Lumber  
Co.,

Appellants.

VS.

STATES MARINE CORPORATION OF DELA-  
WARE,

Appellee.

Transcript of Record  
In Two Volumes  
Volume I  
(Pages 1 to 288)

Appeal from the United States District Court for the  
Western District of Washington,  
Northern Division.

FILED

JUN 11 1929



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United States  
Court of Appeals  
for the Ninth Circuit

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PACIFIC TOW BOAT COMPANY, E. W.  
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HARRY W. STUCHELL, JR.: M. A. WY-  
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# INDEX

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[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

|   | PAGE |
|---|------|
| Answer to Cross-Libel .....                             | 32   |
| Answer of The Pacific Tow Boat Company...               | 9    |
| Answer of E. W. Stuchell, et al.....                    | 19   |
| Appeal:   |      |
| Certificate of Clerk to Record on .....                 | 587  |
| Notice of .....   | 69   |
| Statement of Points on .....                            | 74   |
| Supersedeas Bond on .....                               | 71   |
| Appearance of Bogle, Bogle & Gates as<br>Proctors ..... | 8    |
| Appearance of Graham,<br>Green & Dunn as Proctors.....  | 8    |
| Certificate of Clerk to Record on Appeal ....           | 587  |
| Counsel, Names and Addresses of.....                    | 1    |
| Cross-Libel of E. W. Stuchell, et al. ....              | 26   |
| Final Decree .....                                      | 65   |
| Findings of Fact and Conclusions of Law ....            | 53   |
| Libel in Rem and in Personam .....                      | 3    |
| Notice of Appeal .....                                  | 69   |
| Order Fixing Security .....                             | 69   |

| INDEX                                       | PAGE     |
|---|----------|
| Pre Trial Order .....                       | 34       |
| Release and Cost Bond on Barge E-15.....    | 13       |
| Affidavit of Stuchell, E. W.....            | 17       |
| Affidavit of Wyman, D. E.....               | 18       |
| Marshal's Return .....                      | 19       |
| Release and Cost Bond on the tug "Lea Moe". | 11       |
| Marshal's Return .....                      | 13       |
| Statement of Points on Appeal.....          | 74       |
| Substitution of Proctors.....               | 23       |
| Supersedeas Bond .....                      | 71       |
| Statement of Facts.....                     | 76       |
| Court's Oral Opinion.....                   | 580      |
| Witnesses, Libelant's:                      |          |
| Boltz, Otto K. (Deposition)                 |          |
| direct .....                                | 233, 294 |
| redirect .....                              | 309      |
| recross .....                               | 312      |
| Dusevoir, Eugene                            |          |
| direct .....                                | 192      |
| cross .....                                 | 212      |
| redirect .....                              | 213      |
| Fulmer, Calvin Don                          |          |
| direct .....                                | 214      |
| cross .....                                 | 227      |
| redirect .....                              | 230      |
| recross .....                               | 231      |

## Witnesses, Libellant's—(Continued):

|                                    |               |
|------------------------------------|---------------|
| Green, J. J. (Deposition)          |               |
| direct .....                       | 362           |
| redirect .....                     | 383           |
| Judy, Maurice (Deposition)         |               |
| direct .....                       | 88            |
| Kalem, Harold R.                   |               |
| direct .....                       | 573           |
| cross .....                        | 578           |
| Kane, Thomas F. (Deposition)       |               |
| direct .....                       | 314           |
| recross .....                      | 360           |
| McLaughlin Ethon C.                |               |
| direct .....                       | 107, 189, 412 |
| cross .....                        | 154, 415      |
| redirect .....                     | 183, 190, 416 |
| recross .....                      | 192           |
| Pilar, Matthew George (Deposition) |               |
| direct .....                       | 388           |
| cross .....                        | 403           |
| redirect .....                     | 409, 410      |
| recross .....                      | 410           |

## Witnesses, Respondent's:

|                     |     |
|---------------------|-----|
| Anderson, Johnny A. |     |
| direct .....        | 519 |
| cross .....         | 528 |
| redirect .....      | 540 |

## Witnesses, Respondent's—(Continued):

## Hafey, Lawrence S.

|                |     |
|----------------|-----|
| direct .....   | 541 |
| cross .....    | 553 |
| redirect ..... | 563 |

## Keezer, Leonard

|                |          |
|----------------|----------|
| direct .....   | 439, 457 |
| cross .....    | 477      |
| redirect ..... | 506, 511 |
| recross .....  | 510      |

## Knowles, Roy E.

|              |     |
|--------------|-----|
| direct ..... | 419 |
| cross .....  | 427 |

## Stuchell, Edwin W.

|              |     |
|--------------|-----|
| direct ..... | 513 |
| cross .....  | 517 |

## Stuchell, Harry William

|              |     |
|--------------|-----|
| direct ..... | 434 |
| cross .....  | 438 |

## Wallace, Walter D.

|                |     |
|----------------|-----|
| direct .....   | 565 |
| cross .....    | 570 |
| redirect ..... | 571 |





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Seattle, Washington,

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CHARLES B. HOWARD,

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Seattle, Washington.

Attorneys for Appellee.





United States District Court, Western District of  
Washington, Northern Division

In Admiralty No. 16271

STATES MARINE CORPORATION OF DELA-  
WARE, a Corporation,

Libelant,

vs.

Motor Vessel LEA MOE, Official Number 241972,  
Her Engines, Tackle, Apparel and Furniture;  
Barge E-15, Her Fittings and Equipment;  
THE PACIFIC TOW BOAT COMPANY, a  
Corporation; E. W. STUCHELL, WILLIAM  
D. CARPENTER, HARRY W. STUCHELL,  
JR., M. A. WYMAN, D. E. WYMAN and M.  
H. WYMAN, Doing Business as ECLIPSE  
LUMBER CO., an Unincorporated Company,

Respondents.

LIBEL IN REM AND  
IN PERSONAM

The libel of the above-named libelant against the  
above-named respondent vessels Lea Moe and  
Barge E-15, and against the above-named respond-  
ent The Pacific Tow Boat Company, a corporation,  
and E. W. Stuchell, William D. Carpenter, Harry  
W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and  
M. H. Wyman, doing business under the assumed  
trade name of Eclipse Lumber Co., respondents, in  
a cause of collision damage, civil and maritime, re-  
spectfully shows:

## I.

That said libelant at all times material was and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware and was and now is the owner and operator of the SS Cotton State, official number 249027, a merchant vessel of the United States of 6103 gross tons and 3515 net tons; registered length 438.9 feet and breadth 63.1 feet.

## II.

That respondent vessel Lea Moe is a merchant vessel of the United States, official number 241972 of 42 gross tons and 28 net tons; registered length, 60.9 feet, and breadth, 18.8 feet, designed and constructed for operation as a tug or towing vessel and owned and operated by The Pacific Tow Boat Company, a corporation.

## III.

Barge E-15 is a merchant vessel of the United States, being a cargo barge of wood construction and dimensions of approximately 100 feet length by 38 feet beam by 11 feet depth, owned and operated by Eclipse Lumber Co., an unincorporated business, which is owned and operated by E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, under the aforesaid assumed trade number.

## IV.

The Pacific Tow Boat Company now is and at all times material was a corporation organized un-

der and by virtue of the laws of the State of Washington with an office and place of business in the City of Everett, Washington, and said corporation was and now is the owner and operator of the respondent tug Lea Moe.

## V.

That E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman now are and at all times material were residents of Snohomish County and/or King County, Washington, and now are and at all times material were doing business under the assumed trade name of Eclipse Lumber Co., which company was the registered owner of the aforesaid respondent Barge E-15. That respondent Barge E-15 was at all times material employed and operated in the business of these respondents under the trade name of Eclipse Lumber Co.

## VI.

That on 10 January, 1957, at or about 1845 hours the SS Cotton State was moored at the south side of Pier No. 1, Port of Everett, Washington. That at said time and place the respondent tug Lea Moe while operating under its own power and while having in its possession and control respondent barge E-15, was so negligently navigated, and Barge E-15 was so negligently controlled and maneuvered as to allow said Barge E-15 to drift under the stern counter and to collide with respondent's stationary and moored SS Cotton State, striking the propel-

ler and other portions of libelant's vessel and causing damages as hereinafter enumerated.

## VII.

That as a proximate consequence of the negligence of respondents and each of them, libelant has sustained damages in the approximate amount of \$25,000 so far as is now known, including cost of dry-docking inspection and survey, cost of installation of spare propeller, cost of repair of damaged wheel and eventual reinstallation aboard the vessel, together with incidental expenses, including demurrage to the vessel, extra pilotage, towage and watchman service and general average expenses upon behalf of libelant's vessel and the cargo aboard. That although demand for payment of said damages has been made, no part has been paid.

## VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the above-entitled court.

Wherefore, libelant prays:

(1) That process in rem may issue against the respondent vessel *Lea Moe*, her engines, tackle, apparel, furniture, etc., and against the respondent Barge *E-15*, her fittings and equipment and that all persons having or claiming any interests in either of said vessels be cited to appear and answer under oath all and singular to the allegations aforesaid;

(2) That this Honorable Court adjudge and decree that said respondent vessels pay libelant its damages, and that the respondent vessels be condemned and sold to satisfy said judgment and decree.

(3) That process in due form of law according to the practice of the above-entitled court in causes of admiralty and maritime jurisdiction be issued in personam against the respondents, The Pacific Tow Boat Company, a corporation, and against E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, doing business under the assumed trade name of Eclipse Lumber Co., to appear and answer on oath the matters and things aforesaid.

(4) That this Honorable Court adjudge and decree that said respondents pay to the libelant its damages as aforesaid with interest and costs.

(5) That the court grant to this libelant such other and further relief as may be just and proper in the premises.

SUMMERS, BUCEY &  
HOWARD,

(s) CHARLES B. HOWARD,  
Proctors for Libelant.

Duly verified.

[Endorsed]: Filed January 28, 1937.



[Title of District Court and Cause.]

### APPEARANCE OF PROCTORS

To the Clerk of the Above-Entitled Court:

Will you please enter our appearance as proctors for claimant and respondent, The Pacific Tow Boat Company, in the above-entitled cause and direct service of all serviceable papers, except writs and processes, may be made upon said claimant and respondent by leaving the same with

BOGLE, BOGLE & GATES,  
/s/ EDWARD C. BIELE,  
Proctors for Claimant and  
Respondent.

Receipt of copy acknowledged.

[Endorsed]: Filed January 31, 1957.

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[Title of District Court and Cause.]

### APPEARANCE

To: The Clerk of the Above-Entitled Court:

You will please enter our Appearance for claimants and respondents, E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman, and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., in the above-entitled cause and service of all serviceable papers, except returns and processes may be made upon claimants by leaving the same with:

GRAHAM, GREEN & DUNN,

/s/ BRYANT R. DUNN,

/s/ BEN J. GANTT, JR.,

Proctors for Respondents and Claimants, E. W.  
Stuchell, et al., d/b/a Eclipse Lumber Co., a  
Partnership.

Receipt of copy acknowledged.

[Endorsed]: Filed February 1, 1957.

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[Title of District Court and Cause.]

ANSWER OF THE PACIFIC  
TOW BOAT COMPANY

To: The Honorable Judges of the Above-Entitled  
Court:

The Answer of The Pacific Tow Boat Company, a corporation, to the Libel of States Marine Corporation of Delaware, a corporation, in an alleged cause of collision damage, civil and maritime, admits, denies and alleges as follows:

I.

It is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph I of the Libel and, therefore, denies them.

II.

It admits the matters alleged in Paragraph II of the Libel.

III.

It admits the matters alleged in Paragraph III of the Libel.

## IV.

It admits the matters alleged in Paragraph IV of the Libel.

## V.

It admits the matters alleged in Paragraph V of the Libel.

## VI.

It admits that on January 10, 1957, at or about 1845 hours the SS Cotton State was moored at the south side of Pier No. 1, Port of Everett, Washington. It also admits that at or about that time the barge E-15 struck the propeller of the SS Cotton State. It denies each and every other matter alleged in Paragraph VI of the Libel.

## VII.

It denies that as the proximate consequence of its negligence, or of the Motor Vessel Lea Moe, or of anyone for whom it is responsible that Libelant sustained any damages whatsoever. It admits demand and its refusal of payment.

## VIII.

It admits the admiralty and maritime jurisdiction of this Honorable Court. It denies the other matters alleged in Paragraph VIII of the Libel.

Wherefore, The Pacific Tow Boat Company prays that the Libel herein against it be dismissed with prejudice and with costs, and that it may have such other and further relief as may be just and proper in the premises.

BOGLE, BOGLE & GATES,  
/s/ CLAUDE E. WAKEFIELD,



/s/ EDWARD C. BIELE,

Proctors for Claimant-Respondent The Pacific  
Tow Boat Company.

Receipt of copy acknowledged.

[Endorsed]: Filed February 6, 1957.

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[Title of District Court and Cause.]

### RELEASE AND COST BOND

Know All Men by These Presents:

That the undersigned principal and the undersigned surety are held and firmly bound unto the United States Marshal for the Western District of Washington, his heirs, executors, administrators or legal representatives, in the penal sum of Thirty Thousand Two Hundred Fifty (\$30,250.00) Dollars, lawful money of the United States, for the payment thereof to the benefit of whom it may concern; the said principal and the said surety bind themselves, their successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of January, 1957.

The conditions of this obligation are such, that

Whereas, the above-named respondent motor vessel Lea Moe is in the custody of the United States Marshal for the Western District of Washington under process issued in pursuance of the prayer of the libel filed in this Court and cause; and

Whereas, the undersigned principal is filing its claim of ownership to the said respondent motor

vessel Lea Moe and is applying for release thereof in accordance with the Admiralty rules and practices of the above-entitled court and is filing its appearance in the above-entitled cause;

Now, Therefore, the condition of this obligation is such that if the undersigned principal shall abide by and answer final decree in the above-entitled cause, and pay the money awarded thereby, including all costs and expenses, not exceeding the sum of Thirty Thousand Two Hundred Fifty (\$30,250.00) Dollars, which shall be awarded against it by the final decree of this court, or by any appellate court, if any appeal intervenes, then this obligation shall be void, otherwise it shall remain in full force and effect.

[Seal]                    THE PACIFIC TOW BOAT  
COMPANY,

By /s/ H. O. FOSS,  
Its President, Principal;

[Seal]                    FOSS LAUNCH & TUG CO.,

By /s/ H. O. FOSS,  
Its President, Surety.

The foregoing bond is hereby approved as to form, amount and surety, and notice of bonding is hereby waived and consent given that the motor vessel Lea Moe be immediately released from attachment thereof by the United States Marshal upon filing of this bond without order of court.

SUMMERS, BUCEY &  
HOWARD,

By /s/ CHARLES B. HOWARD.

[Title of Cause.]

MARSHAL'S RETURN ON RELEASE AND  
COST BOND (M/V LEA MOE)

I hereby certify and return that in accordance with the attached Release and Cost Bond, I did release the Motor Vessel Lea Moe, official number 241972, her engines, tackle, apparel and furniture, at Everett, Washington, at 6:30 p.m., February 1, 1957.

W. B. PARSONS,

U. S. Marshal, Western

District of Washington;

By /s/ DONALD F. MILLER,

Chief Deputy

U. S. Marshal.

Marshal's costs, \$7.60.

Receipt of copy acknowledged.

[Endorsed]: Filed February 6, 1957.

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[Title of District Court and Cause.]

RELEASE AND COST BOND—(BARGE E-15)

Know All Men by These Presents:

That the undersigned principals and the undersigned sureties, E. W. Stuchell and D. E. Wyman, are held and firmly bound unto the United States Marshal for the Western District of Washington,

his heirs, executors, administrators or legal representatives, in the penal sum of Thirty Thousand Two Hundred Fifty Dollars (\$30,250.00), in lawful money of the United States, for the payment thereof to the benefit of whom it may concern; the said principals and the said sureties bind themselves, their successors and assigns, jointly, and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of January, 1957.

The conditions of this obligation are such, that

Whereas, the above-named respondent Barge E-15 is in the custody of the United States Marshal for the Western District of Washington under process issued in pursuance of the prayer of the libel filed in this Court and cause; and

Whereas, the undersigned principals are filing their claim of ownership to the said respondent Barge E-15 and are applying for release thereof in accordance with the Admiralty rules and practices of the above-entitled court and is filing its appearance in the above-entitled cause;

Now, Therefore, the condition of this obligation is such that if the undersigned principals shall abide by and answer the final decree rendered by this Court in the above-entitled cause, or any appellate court, if any appeal intervenes, and pay the money awarded thereby, including all costs and expenses, not exceeding the sum of Thirty Thousand Two Hundred Fifty Dollars (\$30,250.00),

which shall be awarded against them by the final decree of this Court, or by any appellate court, if any appeal intervenes, then this obligation shall be void, otherwise it shall remain in full force and effect.

E. W. STUCHELL,  
WILLIAM D. CARPENTER,  
HARRY W. STUCHELL, JR.,  
M. A. WYMAN,  
D. E. WYMAN, and  
M. H. WYMAN,  
Doing Business as Eclipse  
Lumber Co., a Partnership;

GRAHAM, GREEN & DUNN,

By /s/ BEN GANTT, JR.,  
Their Proctor, Principals;

/s/ E. W. STUCHELL,

/s/ D. E. WYMAN,  
Sureties.

United States of America,  
Western District of Washington,  
County of Snohomish—ss.

On this day personally appeared before me, E. W. Stuchell, to me known to be one of the individuals described in and who executed the within and foregoing Release and Cost Bond, and acknowledged that he signed the same as his free and



voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 30th day of January, 1957.

[Seal]      /s/ L. R. JOHNSON,  
Notary Public in and for the State of Washington,  
Residing at Everett.

United States of America,  
Western District of Washington,  
County of King—ss.

On this day personally appeared before me D. E. Wyman, to me known to be one of the individuals described in and who executed the within and foregoing Release and Cost Bond, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 30th day of January, 1957.

[Seal]      /s/ BEN J. GANTT, JR.,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

The foregoing bond is hereby approved as to form. amount and surety, and notice of bonding is hereby waived, and consent given that the Barge E-15 be immediately released from the attachment

thereof by the United States Marshal upon the filing of this bond without order of court.

SUMMERS, BUCEY &  
HOWARD,

By /s/ CHARLES B. HOWARD,  
Proctors for Libelant.

AFFIDAVIT OF E. W. STUCHELL

State of Washington,  
County of Snohomish—ss.

E. W. Stuchell being first duly sworn, on oath deposes and says:

That he is a resident of the Western District of Washington having his residence at Everett, Washington; that he is one of the individual sureties in the above and foregoing Release and Cost Bond; that he owns property within the Western District of Washington, the value of which is double the amount of said Release and Cost Bond, and above all liabilities and exemptions; this Affidavit is given in compliance with Rule 17 of the local Admiralty rules of the United States District Court for the Western District of Washington.

/s/ E. W. STUCHELL.

Subscribed and Sworn to before me this 30th day of January, 1957.

[Seal] /s/ L. R. JOHNSON,  
Notary Public in and for the State of Washington,  
Residing at Everett.

## AFFIDAVIT OF D. E. WYMAN

State of Washington,  
County of King—ss.

D. E. Wyman, being first duly sworn, on oath, deposes and says:

That he is a resident of the Western District of Washington having his residence at Seattle, Washington; that he is one of the individual sureties in the above and foregoing Release and Cost Bond; that he owns property within the Western District of Washington, the value of which is double the amount of said Release and Cost Bond, and above all liabilities and exemptions; this Affidavit is given in compliance with Rule 17 of the local Admiralty rules of the United States District Court for the Western District of Washington.

/s/ D. E. WYMAN.

Subscribed and Sworn to before me this 30th day of January, 1957.

[Seal]     /s/ BEN J. GANTT, JR.,  
Notary Public in and for the State of Washington,  
Residing at Seattle.



[Title of Cause.]

**MARSHAL'S RETURN ON RELEASE AND  
COST BOND (BARGE E-15)**

I hereby certify and return that in accordance with the attached Release and Cost Bond (Barge E-15), I did release the Barge E-15, her fittings and equipment, at Everett, Washington, on the 1st day of February, 1957, at 1:30 p.m. o'clock.

W. B. PARSONS,

U. S. Marshal, Western  
District of Washington;

By : DONALD F. MILLER,

Chief Deputy U. S. Marshal.

Marshal's costs: \$7.20.

Receipt of copy acknowledged.

[Endorsed]: Filed February 6, 1957.

[Title of District Court and Cause.]

**ANSWER OF E. W. STUCHELL, ET AL.**

To the Honorable Judges of the Above-Entitled  
Court:

The answer of E. W. Stuchell, William D. Car-  
penter, Harry W. Stuchell, Jr., M. A. Wyman, D.  
E. Wyman and M. H. Wyman, co-partners doing

business as Eclipse Lumber Co. in an alleged cause of collision, damage, civil and maritime, admit, deny and allege as follows:

### I.

They admit the matters alleged in paragraph I of the libel.

### II.

They admit the matters alleged in paragraph II of the libel.

### III.

They admit that at the time mentioned in the libel they were the bare boat charterers in possession of the screw Eclipse No. 15, official number 369953, a merchant vessel of the United States of wooden construction, 392 gross and net tons, 120.4 feet length, and 31.4 feet breadth.

### IV.

They admit the matters alleged in paragraph IV of the libel.

### V.

They admit they now are and at all times mentioned in the libel were residents of Snohomish County and/or King County, Washington, and now are and were doing business as co-partners under the name of Eclipse Lumber Co., which was the bare boat charter in possession and operator of the screw Eclipse No. 15.

## VI.

They deny the matters alleged in paragraph VI of the libel except such as shall be hereinafter specifically admitted.

## VII.

They deny the matters alleged in paragraph VII of the libel and that libellant sustained any damages whatsoever. They admit demand and refusal of payment.

## VIII.

They admit the admiralty and maritime jurisdiction of this Honorable Court. They deny the other matters alleged in paragraph VIII of the libel.

## IX.

Further answering, and as a separate defense, they allege as follows:

That on the evening of January 10, 1957, the SS Cotton State was berthed at the south side of Pier No. 1, Port of Everett, Washington. While so berthed the tug Lea Moe brought the dumb scows Eclipse No. 15 and Eclipse No. 25, laden with cross-libelants' lumber cargo, alongside the starboard side of the steamer. The scows were close coupled and in tandem with the No. 25 ahead and the No. 15 astern. Upon orders from those on the deck of the Cotton State the two scows were landed as directed and a line securing them was made fast by the mate on the deck of the steamer. Thereupon the Lea Moe maneuvered to shift position from the No. 25 to the No. 15 to take the latter in tow and shift

her as directed by those on the Cotton State. While said maneuver was being accomplished those on the deck of the Cotton State negligently failed to hold the scows in position alongside the steamer and her engineers negligently started up her turning or jacking gear without warning or observing the clearance astern in the vicinity of the propeller as required by prudent seamanship and practice. As a consequence of the negligent acts of the libelant's servants in charge of the SS Cotton State the No. 15 was permitted to drift into the rotating propeller, holing the scow, causing her to fill and to dump part of her cargo before prompt, efficient efforts of the tug Lea Moe cleared the scow from the propeller. The scow was then beached by the Lea Moe. Thereafter libelants were required to expend considerable moneys to salve their dumped lumber cargo, some of which was lost.

## X.

That all and singular the premises are true.

Wherefore, E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., pray that the libel herein against them be dismissed with prejudice and with costs, and that they may have such other and further relief as may be just and proper in the premises.

GRAHAM. GREEN & DUNN.

/s/ BRYANT R. DUNN,

/s/ BEN J. GANTT, JR.,

Proctors for Respondents-Claimants, W. E. Stuchell, M. A. Wyman, D. E. Wyman and M. H. Wyman, d/b/a Eclipse Lumber Co., a Co-partnership.

Duly verified.

[Endorsed]: Filed October 28, 1957.

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[Title of District Court and Cause.]

### SUBSTITUTION OF PROCTORS

To the Clerk of the Above-Entitled Court:

The respondents-claimants, E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners, doing business as Eclipse Lumber Co., hereby substitute Bogle, Bogle & Gates, Central Building, Seattle, Washington, as their proctors in the above-entitled cause in the place and stead of Graham, Green & Dunn.

Dated this 25th day of February, 1958.

E. W. STUCHELL,  
WILLIAM D. CARPENTER,  
HARRY W. STUCHELL, JR.,  
M. A. WYMAN,



D. E. WYMAN, and  
M. H. WYMAN,  
Co-partners, d/b/a Eclipse  
Lumber Co.;

By /s/ E. W. STUCHELL,  
A Partner.

We hereby consent to the substitution of Bogle, Bogle & Gates as proctors for the respondents-claimants E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners, doing business as Eclipse Lumber Co., in the above-entitled cause, in our place and stead.

Dated this 26th day of February, 1958.

GRAHAM, GREEN & DUNN,  
By /s/ BRYANT R. DUNN,  
/s/ BEN J. GANTT, JR.

We hereby agree to be substituted in the place of Graham, Green & Dunn in the above-entitled cause as proctors for the respondents-claimants, E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners, doing business as Eclipse Lumber Co.

Dated this 28th day of February, 1958.

BOGLE, BOGLE & GATES,

By /s/ CLAUDE E. WAKEFIELD,  
/s/ EDWARD C. BIELE.

Receipt of copy acknowledged.

[Endorsed]: Filed February 28, 1958.

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United States District Court, Western District of  
Washington, Northern Division

In Admiralty—No. 16271

STATES MARINE CORPORATION OF DELA-  
WARE, a Corporation,

Libelant,

vs.

Motor Vessel LEA MOE, Official Number 241972,  
Her Engines, Tackle, Apparel and Furniture;  
and Barge E-15, Her Fittings and Equipment,

Respondents,

and

THE PACIFIC TOW BOAT COMPANY, a Cor-  
poration; and E. W. STUCHELL, WILLIAM  
D. CARPENTER, HARRY W. STUCHELL,  
JR., M. A. WYMAN, D. E. WYMAN and M.  
H. WYMAN, Co-partners, Doing Business as  
ECLIPSE LUMBER CO.,

Respondents-Claimants.

E. W. STUCHELL, WILLIAM D. CARPEN-  
TER, HARRY W. STUCHELL, JR., M. A.

WYMAN, D. E. WYMAN and M. H. WYMAN, Co-partners, Doing Business as ECLIPSE LUMBER CO.,

Cross-Libelants,

vs.

STATES MARINE CORPORATION OF DELAWARE, a Corporation,

Cross-Respondent.

CROSS-LIBEL OF E. W. STUCHELL, ET AL.

To the Honorable Judges of the Above-Entitled Court:

The cross-libel of E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners, doing business as Eclipse Lumber Co., in a cause of collision, civil and maritime, alleges as follows:

### I.

That cross-libelants now are and at all times herein mentioned were residents of Snohomish County and/or King County, State of Washington, and co-partners doing business as Eclipse Lumber Co.

### II.

That cross-libelants now are and at all times herein mentioned were the bare boat charterers in possession and operators of the scow Eclipse No. 15, official number 169953, of wooden construction, 302 gross and net tons, 110.4 feet length, and 37.9 feet breadth. Cross-libelants at all times herein men-



tioned were the owners of a cargo of lumber laden aboard the said scow Eclipse No. 15.

### III.

That States Marine Corporation of Delaware was and now is a corporation organized and existing under and by virtue of the Laws of the State of Delaware with an office and place of business in Seattle, Washington, and at all times material herein was the owner and operator of the SS Cotton State, official number 249027, a merchant vessel of the United States of 6,103 gross tons and 3,515 net tons; registered length 438.9 feet and breadth 63.1 feet.

### IV.

That a libel was filed in this Court by Messrs. Summers, Bucey & Howard on or about January 30, 1957, on behalf of States Marine Corporation of Delaware as owner of the SS Cotton State against the scow Eclipse No. 15 (designated as Barge E-15), her fittings and equipment and cross-libelants as respondents claiming damages in the sum of \$25,000.00 arising out of a collision between the said scow and steamer. Cross-libelants have appeared and answered the said libel and claimed and obtained the release of the Eclipse No. 15.

### V.

That the true facts and circumstances of the collision referred to in the aforesaid libel are as follows:

That on the evening of January 10, 1955, the SS Cotton State was berthed at the south side of Pier No. 1, Port of Everett, Washington. While so berthed the tug Lea Moe brought the dumb scows Eclipse No. 15 and Eclipse No. 25, laden with cross-libelants' lumber cargo, alongside the starboard side of the steamer. The scows were close coupled and in tandem with the No. 25 ahead and the No. 15 astern. Upon orders from those on the deck of the Cotton State the two scows were landed as directed and a line securing them was made fast by the mate on the deck of the steamer. Thereupon the Lea Moe maneuvered to shift position from the No. 25 to the No. 15 to take the latter in tow and shift her as directed by those on the Cotton State. While said maneuver was being accomplished those on the deck of the Cotton State negligently failed to hold the scow in position alongside the steamer and her engineers negligently started up her turning or jacking gear causing her propeller to rotate without warning or observing the clearance astern in the vicinity of the propeller as required by prudent seamanship and practice. As a consequence of the negligent acts of the libelant's servants in charge of the SS Cotton State the No. 15 was permitted to drift into the rotating propeller, holing the scow, and causing her to fill and to dump part of her cargo before prompt, efficient efforts of the tug Lea Moe cleared the scow from the propeller. The scow was then beached by the Lea Moe. Thereafter libelants were required to expend consider-

able moneys to salve their dumped lumber cargo, some of which was lost.

## VI.

That the aforesaid collision and resulting damages were not caused through any fault, negligence or want of care on the part of the scows Eclipse No. 15 and Eclipse No. 25, or of any persons for whom cross-libelants were or are responsible, but were due solely to or caused solely by the faults and negligence of the servants and employees of States Marine Corporation of Delaware who were in charge of the SS Cotton State in the following respects, among others, to be proved at the trial hereof:

1. Those in charge of the Cotton State were not competent.

2. Those in charge of the Cotton State were not attentive to their duties.

3. Those in charge of the Cotton State failed to warn those on the tug Lea Moe that the propeller of said Cotton State was to be started without warning.

4. Those in charge of the Cotton State started up the propeller of the said vessel without warning.

5. Those in charge of the Cotton State failed to hold and secure the scows Eclipse No. 15 and Eclipse No. 25 in place when brought alongside by the tug Lea Moe.

6. Those in charge of the Cotton State did not have a sufficient crew available to tie up the scows Eclipse No. 15 and No. 25.

7. Those in charge of the Cotton State knew or should have known of the danger of collision between the scow Eclipse No. 15 and the rotating propeller of the steamer but negligently failed to warn those on the tug Lea Moe of said danger.

8. Those on the Cotton State failed to stop the rotating propeller when they knew or should have known of the danger of the damage.

9. Those in charge of the Cotton State started up her propeller without ascertaining whether her stern area was free and clear of the cross-libelants' scows.

10. In other respects which cross-libelants will specify upon completion of discovery proceedings herein.

## VII.

That by reason of the aforesaid collision cross-libelants sustained damages including costs of repairs to the Eclipse No. 15, survey fees, towing charges, lost cargo, salvage expenses and other incidental costs in the sum of upwards of \$10,000.00 as nearly as can be estimated at this time, no part of which has been paid, although duly demanded.

## VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, cross-libelants pray:

1. That process in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against States Marine Corporation of Delaware, a corporation, and that it be cited to appear and answer under oath all and singular the matters aforesaid;

2. That the cross-libelants may have a decree against States Marine Corporation of Delaware for their damages as aforesaid together with interest and costs;

3. That the libel proceeding of States Marine Corporation of Delaware above described be dismissed with prejudice and without costs;

4. That the cross-libelants may have such other, further and different relief as may be just in the premises.

BOGLE, BOGLE & GATES,

/s/ CLAUDE E. WAKEFIELD,

/s/ EDWARD C. BIELE,

Proctors of Cross-Libelants, E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, d/b/a Eclipse Lumber Co., a Co-partnership.

Duly verified.

[Endorsed]: Filed February 28, 1958.



[Title of District Court and Cause.]

## ANSWER TO CROSS-LIBEL

To the Honorable Judges of the Above-Entitled Court:

Comes now the cross-respondent, States Marine Corporation of Delaware, a corporation, and for answer to the cross-libel of E. W. Stuchell, et al., as served upon proctors for cross-respondent on February 28, 1958, does admit, deny and allege as follows:

### I.

Cross-respondent admits the allegations of Article I of the cross-libel.

### II.

Answering Article II of said cross-libel, this cross-respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

### III.

Cross-respondent admits the allegations of Article III of the cross-libel.

### IV.

Cross-respondent admits the allegations of Article IV of the cross-libel.

### V.

Answering Article V of said cross-libel, cross-respondent denies each and every allegation contained therein except only that cross-respondent ad-

mits that a collision occurred between the drifting barge Eclipse No. 15 and the rotating propeller of the SS Cotton State at Everett, Washington, on the evening of January 10, 1955, causing damage to both the vessel and the barge.

## VI.

Answering Article VI of said cross-libel, this cross-respondent denies each and every allegation contained therein and particularly denies that the aforesaid collision and resulting damages were caused by any fault or negligence of the cross-respondent or those in charge of the SS Cotton State as therein alleged, or otherwise.

## VII.

Answering Article VII of said cross-libel, this cross-respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

## VIII.

Answering Article VIII of said cross-libel, this cross-respondent denies the same except only that it admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

## First Affirmative Defense

For further answer and by way of a first affirmative defense to said cross-libel, cross-respondent alleges:

## I.

That cross-libelants are guilty of laches and unreasonable delay in presenting this cross-libel more than 13 months after the occurrence of the accident and the filing of the libel in this cause.

Wherefore, cross-respondent prays that the cross-libel herein against it be dismissed with prejudice and with costs and that it have such other and further relief as may be just and proper in the premises.

SUMMERS, BUCEY &  
HOWARD,

/s/ CHARLES B. HOWARD,  
Proctors for Cross-  
Respondent.

Duly verified.

[Endorsed]: Filed March 12, 1958.

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[Title of District Court and Cause.]

## PRETRIAL ORDER

As a result of Pretrial conferences conducted between libelant, represented by Summers, Bucey & Howard (Charles B. Howard of proctors), The Pacific Towboat Company, respondent, claimant represented by Bogle, Bogle & Gates (E. C. Biele and M. Bayard Crutcher of proctors) and respondents-claimants and cross-libelants E. W. Stuchell, et al., as co-partners doing business as Eclipse Lumber Co., represented by Bogle, Bogle & Gates



(E. C. Biele and M. Bayard Crutcher of proctors), the following matters were determined upon for the purpose of this Pretrial Order.

## I.

### Nature of Proceedings

This Admiralty action was commenced by Libel in Rem and in Personam filed in this Court on January 28, 1957. By the libel the States Marine Corporation of Delaware, as owner of the SS Cotton State seeks to recover damages as a result of an accident occurring while said vessel was moored at the Port Dock No. 1 at Everett, Washington, on January 10, 1957, when a scow known as Eclipse No. 15 bareboat chartered by the respondents Stuchell, et al., doing business as Eclipse Lumber Co., which was being towed by the respondent tug Lea Moe owned and operated by respondent The Pacific Tow Boat Company, came in contact with the propeller of the SS Cotton State, causing damages thereto.

Respondents and cross-libelants Stuchell, et al., doing business as Eclipse Lumber Co., assert by cross-libel against libelant their claim for damages sustained to scow Eclipse No. 15 in the same accident.

## II.

### Admitted Facts

(1) That libelant, States Marine Corporation of Delaware is a Delaware corporation and at all times

material was the owner and operator of the SS Cotton State a merchant vessel of 6103 gross and 3515 net tons, registered length 438.9 feet and breadth, 63.1 feet.

(2) That respondent and claimant The Pacific Tow Boat Company is a Washington corporation and at all times material was the owner and operator of the respondent tug Lea Moe, a Diesel powered vessel of 265 h.p., of 42 gross and 28 net tons, and of registered length 60.9 feet and breadth 18.8 feet, equipped with pilot house controls of the main engine.

(3) That respondents, claimants and cross-libelants E. W. Stuchell, et al., doing business as co-partners under the assumed name of Eclipse Lumber Co., were at all times material residents of Snohomish or King counties, state of Washington, and were the bareboat charterers of the two square-ended cargo scows Eclipse No. 15 and Eclipse No. 25 (hereinafter referred to as No. 15 and No. 25), each of which is of wood construction, length 110.4 feet and breadth 37.9 feet.

(4) That at the time of the filing of this action and of the service of the process of this court in rem and in personam the tug Lea Moe and the scow No. 15 were within the geographical jurisdiction of this Court, to wit: At Everett, Washington.

(5) That the Port Dock No. 1 of Everett is a public terminal in the harbor of Everett, Washing-

ton, extending into Puget Sound, within the geographical jurisdiction of this Court.

(6) That on January 10, 1957, at about 1845 hours, the SS Cotton State was moored by lines to the south side of Port Dock No. 1, Everett, Washington, having just arrived at said terminal under its own power from Seattle, Washington. Said vessel was moored bow in and stern out, with its port side against the south side of said terminal dock.

(7) That on the evening of January 10, 1958, the tug Lea Moe shifted the scows No. 15 and No. 25, loaded with lumber, from a mooring in Everett harbor to the offshore starboard side of the SS Cotton State. Said shift was made by the tug Lea Moe towing on a short hawser, extending for a distance from 8 to 10 feet over the stern of the tug to where it was attached to a stanchion at the forward starboard corner of scow No. 25. There were short coupling lines fastened between the two corner stanchions aft on the No. 25 and extending to the two forward corner stanchions on the No. 15 which was the after scow in the tandem tow. The two scows were close coupled with a foot or so clearance between them.

(8) That during the aforesaid shift of the scows No. 15 and No. 25 the tug Lea Moe was manned by a master and two deckhands. That neither scows No. 15 or No. 25 carried a crew or barge men. There were no employees of respondent Eclipse Lumber Co. aboard the tug or scows.

(9) That during the aforesaid shift weather was fair, a light southeasterly wind was blowing, and the stage of tide was approximately low water. Visibility was good. The tug Lea Moe was burning red and green side lights and towing lights on the mast. No other marine traffic was encountered by the tug Lea Moe in making the shift from West Cove to a point on the offshore or starboard side of the Cotton State at the slip on the south side of Port Dock #1.

(10) As the tug Lea Moe brought the leading scow to a position alongside the starboard-offshore side of the Cotton State, a mooring line was passed from the vessel which was secured by one of the deckhands of the tug Lea Moe to the starboard forward stanchion of the leading scow, #25. No other mooring lines were secured between the Cotton State and either scow #25 or #15 before the accident occurred.

(11) The Cotton State was equipped with an electrically-operated turning or jacking gear which was engaged by one of the engineers of the vessel sometime after the vessel arrived at Port Dock #1, Everett from Seattle. The use of this turning or jacking gear on the Cotton State resulted in the propeller making a complete turn in a period of seven to eight minutes. The turning or jacking gear of the Cotton State was in operation at the time of the accident in an astern rotation, causing the propeller to turn counterclockwise, looking from the stern.

(12) That sometime after the tug *Lea Moe* brought scows #25 and #15 along the offshore-starboard side of the *Cotton State*, the aftermost or trailing scow in the tow, to wit: #15 drifted under the stern counter of the *Cotton State* and came in contact with the propeller of the vessel as it was being rotated in the jacking or turning gear, causing damages to the propeller of the *Cotton State* and to scow #15 and its cargo of lumber as hereinafter described.

(13) That as a result of the aforesaid accident, the *Cotton State* and libelant as its owner sustained damages including: cost or repairs to three blades of the propeller, including drydocking for removal of the propeller, drawing and testing the tailshaft, and various incidental expenses such as extra pilotage, towage, watchmen's services, survey services, extra crew, subsistence and fuel, loss of earnings and revenue, and general average charges. That the total amount of the aforesaid damages of libelant and the *S. S. Cotton State* has been stipulated by all parties to be in the sum of \$22,500, and libelant will not be required to put in evidence any further proof as to the amount, reasonableness or justification for said damages.

(14) That as a result of the aforesaid accident, the respondents-claimants and cross-libelants *E. W. Stuchell et al.* doing business as *Eclipse Lumber Co.* and the scow #15 sustained damages including the cost of repairs on scow #15, extra towage, extra charges for recovering and reloading



lumber lost from the scow, rental of additional scow, extra labor and detention of stevedores, survey fees and other incidental charges. That the total amount of the aforesaid damages of the above-mentioned respondents, claimants and cross-libelants has been stipulated by all parties to be in the sum of \$9,789.25, and said parties will not be required to put in evidence any further proof as to the amount, reasonableness or justification for said damages.

(15) That each party sustaining damages as aforesaid has made demand upon other parties to this action for payment of said damages, but no part of said claims have been paid.

### III.

#### Libelant's Contentions

(1) That the SS Cotton State was lawfully and properly moored to the south side of Port Dock #1, Everett, before and at the time of the occurrence of the accident in question.

(2) That immediately upon arrival of the Cotton State at Port Dock #1, Everett, on the evening of January 10, 1957, and prior to arrival of tug Lea Moe with scows #25 and #15 in tow at the slip or alongside the vessel, there were displayed from a position hanging over each side of the stern of the Cotton State to a point about 5 or 6 feet above the water line two wooden boards painted in red and white stripes approximately 9 feet long,



to each of which was attached a marine type light of 60 to 75 watts enclosed in a red glass cover. That said lights flashed red every three to four seconds. That above said flashing light boards there were mounted on each side of the handrail on the main deck at the stern boards approximately 5 feet long by 3 feet high, and on the side of each said board facing outboard was the legend "Keep Clear of Propeller" in letters 5 to 6 inches high, painted in red on a white background. That cluster lights were placed over the railing adjacent to and shining on each of said boards to illuminate the outboard side and lettering as above. That each of the above warnings was in place, lighted and operating at and immediately prior to the time when the tug Lea Moe came into the slip and alongside the off-shore-starboard side of the Cotton State and prior to the accident in question.

(3) That the turning or jacking gear in use aboard the Cotton State at the time of the accident is a device used on all steam turbine driven vessels to enable very slow rotation of the turbines, shaft and propeller for a period of several hours after the main engine has been in operation, so that the rotors in the turbine will cool down gradually and evenly and not cause damage to the machinery. That the use of the turning or jacking gear on the engine, turbine and propeller of the Cotton State was a common and recognized practice uniformly followed on all steam turbine driven ships and was known or should have been known to respondents

and to its agents and employees, the master and deckhands on the tug Lea Moe, as they brought the tandem tow of scows #25 and #15 alongside the starboard-offshore side of the Cotton State.

(4) That scows #15 and #25 did not carry navigation lights as required by applicable statutes or rules, although it was after sunset and dark at the time the scows were being moved by the tug Lea Moe.

(5) That scows #25 and #15 were in, and remained in, the control of respondents throughout the towing, landing and mooring operations and up to and after the time of the accident causing damages to the vessel and to scow #15. That no one employed by libelant or the Cotton State or representing them undertook to control or exercise any supervision over the manner and/or location of landing and securing the two scows alongside the vessel, or of the manner in which the tug was towing, or had coupled and secured, the two scows for the purposes of the tow.

(6) That there was ample maneuvering space in the slip at the south side of Port Dock #1 within which respondents could have safely maneuvered the tow, if properly handled.

(7) That respondents were negligent in the operation of the tug Lea Moe and of scows #25 and #15 as follows:

(a) In failing to observe the propeller and

stern section of the Cotton State and avoid contact with the propeller by scow #15;

(b) In failing to observe the propeller warning boards and flashing lights displayed over each side of the stern of the Cotton State;

(c) In maneuvering the tug and tow in such a manner as to permit scow #15 to come in contact with the stern section and slowly turning propeller of the Cotton State;

(d) In failing to have adequate crew aboard the tug and scows to enable those representing respondents during said operations to make adequate observations and obtain reports concerning the position of the scows with relation to the stern of the Cotton State and this take steps to avoid having scow #15 come in contact with the stern section and propeller of said vessel;

(e) In failing to allow for the set of the tide and current, thus permitting scow #15 to drift under the stern counter of the Cotton State and come in contact with its slowly turning propeller;

(f) In failing to display proper lights or any lights whatsoever, aboard scows #25 and #15 while being towed in navigable waters of the United States after the hour of sunset, as required by applicable statutes and rules;

(8) That the negligence of respondents was the sole, proximate cause of the accident of January 10, 1957, which caused damages to the SS Cotton State and to libellant.

(9) That libelant should recover from respondents and each of them its full damages in the agreed amount of \$22,500.

(10) That cross-libelant should recover nothing from libelant on their claim for damages to scow #15 and incidental expenses in connection therewith.

#### IV.

##### Pacific Tow Boat Company's Contentions

1. That the landing and changing of the scows was done pursuant to instructions from those on the Cotton State who were positioned on her deck and who had the best possible view of what was going on.

2. That the dispatching of the scows was pursuant to orders received for those acting for the Cotton State.

3. That there were no lights or warnings visible on the starboard side aft on the Cotton State when the Lea Moe passed that area with the scows.

4. That the Cotton State's jacking gear was started up, when the scows were alongside, by her engineers without any assurance from those on deck that the propeller area was cleared or that there was no potential danger to the propeller if it was rotated.

5. That those in charge of the Cotton State started up the propeller without warning to the tug.

6. That those on deck of the Cotton State had control of the scows, which were an integral unit, when the line from the No. 25 was secured on it and snugged on the steamer. Thereafter the scows were allowed to drift onto the propeller because of the failure of those on the Cotton State to hold them.

7. That the propeller of the Cotton State kept rotating for at least three to four minutes causing damage to three of its four blades. That situation was one which the mate or others on the steamer saw or should have seen and who negligently failed to see that the propeller's rotation was stopped at once to avoid or minimize damage to it and to the scow No. 15.

8. That the tying up of the scows was fully participated in and directed by the mate and those on deck of the Cotton State which vessel was the consignee of the scows.

9. That the conduct of those on the Cotton State was casual and without thought of the safety of that vessel or the scows when they started up the propeller, tied up the scows, and observed, or should have observed, the trouble of the No. 15.

10. That before starting up the jacking gear an inspection by someone should have been made that the propeller was not menaced. That was not done. Any such custom, to the contrary, was not known to the engineers and others on the Cotton State.



11. That there was an insufficient crew on deck of the Cotton State to tie up the scows.

12. That the mate's actions in getting his flashlight when he first saw the scow in the way of the propeller instead of notifying those in the engine room to stop its rotation, or controlling the scows with the line to the No. 25, or notifying those on the tug of the danger, was a lack of general prudence and good seamanship.

13. That whether or not there were lights on the scows had nothing to do with this matter because the scows were plainly visible to those on the deck of the Cotton State who actually had control over them when this occurred.

14. That the libel against Pacific Tow Boat Company and the tug Lea Moe should be dismissed with prejudice.

#### Eclipse Lumber Co.'s Contentions

1. That no one for whom it was or is responsible had anything to do with the way the scows were tied up or the damages occurred.

2. That it adopts the contentions of Pacific Tow Boat regarding the faults and neglect of those on the Cotton State.

3. That it should recover damages in the amount of \$9,789.12 as stipulated from States Marine Corporation of Delaware.



4. That the libel against it and the No. 15 should be dismissed with prejudice.

V.

Libelant's Contended Issues of Fact

1. What were the conditions at the stern of the Cotton State as to the propeller turning, and as to warning boards and lights as the tug Lea Moe and scows No. 25 and No. 15 approached and passed the stern of the vessel to enter the slip and come alongside the offshore-starboard side of the Cotton State?

2. Should the master and deckhands on the tug Lea Moe have observed the turning propeller, and the warning boards and lights, if any, at the stern of the Cotton State?

3. Who designated where the two scows were to be tied up or moored alongside the Cotton State?

4. Did the tug Lea Moe and scows No. 25 and No. 15 have an adequate number of persons aboard to control the tug and scows and to provide observations and reports on position and control during the maneuver being undertaken?

5. Did scows No. 25 and No. 15 have proper lights displayed on them during the operation and the maneuvers being performed at the time of the accident?

6. Did the master and deckhands of the Lea Moe fail to take proper steps to allow for the set

of the tide or current so as to prevent contact between the scow No. 15 and the stern and propeller of the Cotton State?

7. Was it negligent for the master and deckhands on the tug Lea Moe to allow its scow No. 15 to come in contact with the propeller and stern of the Cotton State?

8. Were the engineers of the Cotton State negligent in engaging the jacking or turning gear, or in failing to disengage or stop the turning gear before the accident?

#### Respondents Contended Issues of Fact

1. Did those on the deck of the Cotton State snug the line that they had passed to the No. 25 and was secured on the scow before the tug took in its line?

2. When was the propeller of the Cotton State started up and where were the scows then?

3. Did those on the Cotton State fail to hold the scows from drifting back or sagging under her counter after the line was passed and secured to the forward scow?

4. How long was the propeller in contact with the No. 15 and what, if anything, was done on the Cotton State during that period to avoid or minimize damage?

5. Was any inspection made by those on the Cotton State to see that the propeller area was clear before they started up the jacking gear?

6. Did anyone employed by Eclipse Lumber Co. participate in the events of this accident?

7. What was the participation of the officers and crew of the Cotton State in receiving and tying up the scows?

8. What did the chief mate of the Cotton State do, if anything, when he knew, or should have known, that the propeller of his ship was menaced?

9. What means were available to those on deck to notify the engineers that the propeller was menaced, and what if anything was done to give notification?

10. Was an efficient and seamanlike watch maintained in Cotton State's engine room and on her deck when the scows were brought along side and the jacking gear was engaged?

## VI.

### Libelant's Contended Issues of Law

1. Is there a presumption in favor of libelant and against respondents by reason of the moving tug and barges having come in contact with a stationary vessel?

2. Were the respondents or any of them negligent?

3. Was libelant negligent?

4. Was there statutory fault of respondents by reason of the failure, if any, to display proper

navigation lights on scows No. 15 and No. 25 under applicable statutes and rules?

5. Was the negligence, if any, of respondents or any of them, or of libelant, a proximate cause of the accident?

6. Should libelant recover the full amount of its damages from respondents, or any of them?

7. Should cross-libelants recover any of their damages against libelant?

8. Should the mutual fault doctrine be applied?

9. Should the major-minor fault doctrine be applied?

#### Respondents' Contended Issues at Law

1. Was libelant and cross-respondent negligent?

2. Were the respondents, or either of them, negligent?

3. Was the negligence, if any, of the respondents, or any of them, or of libelant and cross-respondent, the proximate cause of the accident?

4. What care of the scows was required by the Cotton State as their consignee?

5. Were those on the Cotton State negligent in failing to minimize the damages to the steamer and the scow?

6. Did those on the Cotton State exercise reason-

able diligence for the protection and the safety of the scows and the steamer?

7. Should the mutual fault doctrine be applied?

8. Should the libelant recover the full amount of its damages from respondents, or any of them?

9. Should the cross-libelant recover the full amount of its damages from the libelant and cross-respondent?

## VII.

### EXHIBITS

#### Libelants

Cotton State Deck Log-Rough—Resp. No. 3.

Cotton State Deck Log-Smooth.

Cotton State—Photostat of Bridge Bell Book—

Resp. No. 4:

Cotton State Engine Log-Rough—Boltz No. 1.

Cotton State Engine Log-Smooth—Boltz No. 2.

Cotton State Engine Bell Book—Boltz No. 3—

Resp. No. 2.

Photograph of Propeller—Boltz No. 4.

Photograph of Propeller—Boltz No. 5.

Photograph of Propeller—Boltz No. 6.

Photograph of Propeller—Boltz No. 7.

Photograph of Propeller—Boltz No. 8.

Photograph of Propeller—Boltz No. 9.

Photograph of Propeller—Boltz No. 10.

Certified photostat of the daily report for January 10, 1957, U. S. Weather Bureau, Seattle station.

## Respondents

Log of tug Lea Moe.

Photograph of damage to scow E-15.

Photograph of damage to scow E-15.

Capacity plan of the C 2 type vessel.

The exhibits of all parties listed above were produced and identified and may be received in evidence if otherwise admissible without further authentication, it being admitted that each is what it purports to be. Exhibits not listed will be admitted by the court where a good cause is shown for the withholding or delay in presentation thereof.

## VIII.

## Action by Court

The foregoing pretrial order has been approved by the parties hereto as evidenced by the signatures of their counsel hereon. This order is hereby entered, and as a result of which the pleadings pass out of the case and this pretrial order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

Done in open court this 21st day of November, 1958.

/s/ JOHN C. BOWEN,

United States District Judge.



Approved:

/s/ CHARLES B. HOWARD,  
Of Attorneys for Libelant.

/s/ B. BAYARD CRUTCHER,  
Of Attorneys for Respondents-Claimants and Cross-  
Libelant.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 21, 1958.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action in Admiralty having been duly called for trial commencing on November 25 and the trial continuing on November 26, November 28 and December 1, 1958, upon issues of liability as set forth in Pretrial Order entered in this cause on November 21, 1958, the amount of provable damages on the libel and cross-libel having been agreed upon by the parties and admitted in the Pretrial Order; each of the parties being present and represented by their respective proctors of record, Summers, Bucey & Howard (Charles B. Howard and T. F. Paul of counsel) for libelant States Marine Corporation of Delaware and Bogle, Bogle & Gates (E. C. Biele and M. B. Crutcher of counsel, for respondents and claimants, the M/V Lea Moe,

Barge E-15, The Pacific Tow Boat Company, E. W. Stuchell, et al., co-partners doing business as Eclipse Lumber Co., the last named parties also being cross-libelants; the trial having proceeded with witnesses being called and evidence introduced by the libelant, respondents, claimants and cross-libelants; the Court having fully considered all of the evidence, the exhibits and the arguments of proctors for each party, and being otherwise fully advised in the premises, and having rendered its oral decision on December 1 at the conclusion of the trial; now therefore, in conformity with the Admitted Facts of the Pretrial Order and the oral decision of this Court, now makes and enters the following:

### Findings of Fact

1. Libelant, States Marine Corporation of Delaware is a Delaware corporation and at all times material was the owner of the SS Cotton State, a merchant vessel of 6103 gross tons and 3315 net tons, registered length 438.9 feet and breadth 63.1 feet.

2. Respondent and claimant The Pacific Tow Boat Company is a Washington corporation with its principal office and place of business at Everett, Washington, and at all times material was the owner and operator of the respondent tug Lea Moe, a diesel powered vessel of 265 H.P., of 42 gross and 28 net tons, and of registered length 60.9 feet and breadth 18.8 feet, equipped with pilot house controls of the main engine.

3. Respondents, claimants and cross-libelants E. W. Stuchell, et al., doing business as co-partners under the assumed name of Eclipse Lumber Co. were at all times material residents of Snohomish or King Counties, State of Washington, and were the owners of the two square-ended cargo barges known as Eclipse No. 15 and Eclipse No. 25 (hereinafter referred to as No. 15 and No. 25), each of which was of wood construction, length 110.4 feet and breadth 37.9 feet.

4. That at the time of the filing of this action and of the service of process of this court in rem and in personam the tug Lea Moe and the barges No. 15 and No. 25 were within the geographical jurisdiction of this Court, to wit: at Everett, Washington.

5. That the Port Dock No. 1 of Everett is a public terminal in the harbor of Everett, Washington, on tidewater and not in the Snohomish River, within the geographical jurisdiction of this Court.

6. That on January 10, 1957, at about 6:45 p.m., the SS Cotton State completed its docking operations at the Port Dock No. 1 at Everett and was moored to the south side of said dock by lines extending from the fore and aft parts of the vessel to the dock. Said vessel had just arrived at Everett under its own power from Seattle, Washington. It was moored bow in and stern out, with its port side against the south side of Port Dock No. 1. That after the docking operations were completed

said vessel lay completely moored and stationary at that pier.

7. That at the aforesaid time, to wit: 6:45 p.m., the SS Cotton State had displayed on its offshore stern area a standard size fixed signboard type of warning of the propeller area and the danger to other craft of getting near that propeller area and particularly the propeller on that vessel. In addition thereto, there was in place overhanging the side of the ship at or about the stern quarter on the starboard or offshore side the usual warning light attached to a striped painted board which had been lowered to a point where it was suspended by rope lines a few feet above the level of the water. Said light was red in color and was burning and flashing every few seconds at all times material to this accident.

8. That immediately after the "Finished With Engine" bell was received in the engine room at 6:45 p.m., the engineer on watch, as was customary, started the turning engine or jacking gear on the SS Cotton State for the purpose of after-voyage conditioning of the vessel's engine, turbine and rotors, for their proper and usual care and protection during the period that the SS Cotton State would be alongside the Port Dock No. 1 for loading operations. The setting in motion and operation of said turning engine or jacking gear caused the propeller of the SS Cotton State to make a very slow turn, a full revolution taking a period of from seven

to eight minutes, which was in keeping with the customs and usages on turbine engine vessels of this type.

9. That on the evening of January 10, 1957, the tug Lea Moe shifted barges No. 15 and No. 25, loaded with lumber, from a mooring in Everett harbor to the offshore starboard side of the SS Cotton State. Said shift was made by the tug Lea Moe towing the barges in tandem on a short hawser extending for a distance of from 8 to 10 feet over the stern of the tug to where said hawser was attached to one stanchion at the forward starboard corner of barge No. 25. There were short coupling lines fastened between the two corner stanchions aft on the No. 25 to the two corresponding forward corner stanchions on the No. 15, which was the after barge in the tandem tow. The barges were thus close coupled, with a foot or two of clearance between them.

10. That during the aforesaid shift of the barges No. 15 and No. 25 the tug Lea Moe was manned by a master and two deckhands. Neither barge No. 15 or barge No. 25 carried a crew or bargemen. There were no employees of respondent Eclipse Lumber Co. aboard the tug or barges.

11. That during the aforesaid shift of the barges No. 15 and No. 25 the weather was fair, a light southeasterly wind was blowing, and the stage of the tide was approximately low water. Visibility was good but it was after sunset, which was at 4:29 p.m. and it was dark. The tug Lea Moe was burning



red and green side lights and towing lights on the mast. There were no lights or lanterns being carried or burned and displayed on either barge No. 15 or barge No. 25.

12. That while the SS Cotton State was lying at rest and completely moored at Port Dock No. 1, and within about five or six minutes after the vessel had thus become completely and properly moored, the tug Lea Moe came alongside the offshore or starboard side of the vessel, towing the two lumber laden barges, with No. 25 as the leading barge and No. 15 as the following or trailing barge. That as the tug and barges passed by the stern area and propeller area of the SS Cotton State, those persons on the tug were making preparations for tying up the two barges alongside the SS Cotton State to enable the lumber on the two barges to be loaded aboard the vessel. The master of the tug Lea Moe brought the tow alongside the SS Cotton State at a point considered by him to be a suitable place to stop the forward movement of the tug and tow and signalled to the chief mate on the deck of the SS Cotton State that the tug and tow desired a mooring line from the vessel. At that time the tug and tow had arrived at a point where the barge No. 25 was approximately under the midship house of the vessel.

13. The chief mate and the boatswain of the SS Cotton State passed a barge mooring line down to one of the deckhands of the tug who was then on the deck of barge No. 25, and who then attached said line to the offshore forward stanchion of No. 25,



the leading barge. The selection or determination of the place for fixing the line was determined by those aboard the tug and tow. No other mooring lines were secured between the SS Cotton State and either barge No. 25 or barge No. 15 before the accident occurred, the one mooring line being all that persons on the tug and barges called for.

14. That after the attaching of said single barge mooring line, the towing hawser of the tug was cast loose and the rear or trailing barge No. 15 was allowed by the tug Lea Moe to drift under the stern counter and to collide with the slowly revolving propeller of the SS Cotton State, with at least two or more blades of the propeller separately striking the after inshore or port side of barge No. 15. This resulted in severe and extensive damage to that barge and the tug Lea Moe thereupon towed it from under the stern of the vessel and to a place of comparative safety to prevent it from sinking.

15. That as a result of the propeller striking barge No. 15, the automatic cutoff device on the turning engine or jacking gear functioned to stop the revolving of the shaft and propeller of the SS Cotton State. There is not sufficient evidence to support a finding as to the exact time that the slow revolving of the propeller was stopped by reason of the functioning of the cutoff device on the turning engine or jacking gear.

16. That the respondent tug Lea Moe and the respondent and claimant Pacific Tow Boat Company

as its owner and operator were at fault and negligent in causing and contributing to cause the collision of the barge No. 15 with the propeller of the SS Cotton State in the following particulars:

(a) That the tug Lea Moe and its tow, being the moving vessels, collided with the slowly revolving propeller of the moored and stationary SS Cotton State.

(b) That the tug Lea Moe and respondent Pacific Tow Boat Company were negligent in failing to place and assist in placing, and seeing that there was placed upon the after end of barge No. 15, a navigation light, as required, under conditions then existing, by applicable law and regulations.

(c) That the tug Lea Moe and respondent The Pacific Tow Boat Company were negligent for not having a lookout posted on the after end of barge No. 15.

That the foregoing acts and omissions to act on the part of the tug Lea Moe and respondent The Pacific Tow Boat Company did proximately cause and proximately contribute to causing the collision of the barge No. 15 with the propeller of the SS Cotton State.

17. That respondent barge Eclipse No. 15 was at fault and negligent in not having navigation lights displayed and burning on the after end of said barge No. 15 during periods of navigation between the hours of sunset and sunrise, as required by ap-

plicable law and regulations. That the evidence in this case does not show that the absence of such navigation lights on barge No. 15 neither did not nor could not have been a proximate cause of the accident and collision and the resulting injury and damage to the SS Cotton State and her propeller. That the faults of the No. 15 were occasioned by the primary negligence of the tug and its owner-operators.

18. That the SS Cotton State was in all respects a completely moored vessel at the time of the accident. That the operation of the turning engine or jacking gear on the SS Cotton State at the time in question was in harmony with due and ordinary care for the safety of that vessel. That the precautions taken to display propeller warning signs and lights was in harmony with due and ordinary care for the safety of other vessels lawfully and prudently using and navigating the waters about and near the SS Cotton State and the propeller area of that vessel. That the SS Cotton State was not negligent or contributorily negligent in any material respect on account of any act of omission or commission respecting the occurrence of the accident and the resultant damage to the vessel and to barge No. 15.

19. That the damages sustained by libelant and the SS Cotton State as a result of this accident are in the agreed and admitted amount of \$22,500, which include cost of drydocking and repairs, de-

tention and extra expenses and incidental expenses incurred and paid by libelant.

20. That the admitted and agreed amount of damages to cross-libelant Eclipse Lumber Co., as a result of this accident are in the amount of \$9,-789.25, which includes cost of repairs, extra towage and extra charges for recovering and reloading lumber lost from the barge, rental of additional barge, extra labor and detention of stevedores, survey fee and other incidental charges.

Done in Open Court this 10th day of December, 1958.

/s/ JOHN C. BOWEN,  
United States District Judge.

### Conclusions of Law

Based upon the foregoing Findings of Fact it is concluded:

(1) This Court has jurisdiction of this cause and of the respondent vessels in rem and the respondent persons and corporation in personam.

(2) The SS Cotton State and libelant were not at fault and did not contribute to cause the accident.

(3) The respondent tug Lea Moe and its owner and operator, the respondent and claimant The Pacific Tow Boat Company were jointly and severally negligent and at fault and did each proximately contribute to cause the accident.

(4) The respondent barge Eclipse No. 15 was jointly and severally negligent and at fault with the respondent tug Lea Moe and respondent The Pacific Tow Boat Company and such fault did proximately contribute to cause the accident.

(5) That libelant is entitled to a decree against each of the above-named respondents and claimant The Pacific Tow Boat Company, jointly and severally, for the full amount of libelant's damages proximately resulting from the collision and accident in the sum of \$22,500, and libelant is additionally entitled to recover from each of the aforesaid respondents, jointly and severally, its taxable costs and taxable proctor's fee in this action.

(6) That cross-libelants are not entitled to recover from libelant in any amount on the cross-libel and said cross-libel should be dismissed with prejudice as to the libelant.

(7) That since the respondent The Pacific Tow Boat Company had the obligation to furnish a crew and navigation lights for the barge No. 15 and failed to do so, the cross-libelants E. W. Stuchell, et al., doing business as Eclipse Lumber Co. is entitled to a decree against the respondent The Pacific Tow Boat Company for the full amount of their damages proximately resulting from the collision and accident in the sum of \$9,789.25, and in addition thereto respondents Eclipse Lumber Co. as owners of the E-15 are entitled to recover from the owner-operators for any and all amounts for which they



may be liable to pay, and pay, to libelant herein respecting the Cotton State's damages.

Done in Open Court this 10th day of December, 1958.

/s/ JOHN C. BOWEN,  
United States District Judge.

Prepared, approved and presented by:

SUMMERS, BUCEY &  
HOWARD,

/s/ CHARLES B. HOWARD,  
Proctors for Libelant.

Approved as to form only.

BOGLE, BOGLE & GATES,

By /s/ E. C. BIELE,

/s/ M. B. CRUTCHER.

Receipt of Copy acknowledged.

Lodged December 8, 1958.

[Endorsed]: Filed December 10, 1958.



United States District Court, Western District  
of Washington, Northern Division

In Admiralty—No. 16271

STATES MARINE CORPORATION OF DELA-  
WARE, a Corporation,

Libelant,

vs.

Motor Vessel LEA MOE, Official Number 241972,  
Her Engines, Tackle, Apparel and Furniture,  
and Barge E-15, Her Fittings and Equipment,

Respondents,

and

THE PACIFIC TOW BOAT COMPANY, a Cor-  
poration, and E. W. STUCHELL, WILLIAM  
D. CARPENTER, HARRY W. STUCHELL,  
JR., M. A. WYMAN, D. E. WYMAN and  
M. H. WYMAN, Co-partners, Doing Business  
as ECLIPSE LUMBER CO.,

Respondents-Claimants.

E. W. STUCHELL, WILL D. CARPENTER,  
HARRY W. STUCHELL, JR., M. A.  
WYMAN, D. E. WYMAN and M. H. WYMAN,  
Co-partners, Doing Business as ECLIPSE  
LUMBER CO.,

Cross-Libelants,

vs.

STATES MARINE CORPORATION OF DELA-  
WARE, a Corporation,

Cross-Respondent.

### FINAL DECREE

This action in Admiralty having come on duly  
and regularly for trial on November 25, 1958, and

subsequent days, each party being present and represented by their respective proctors of record, Summers, Bucey & Howard (Charles B. Howard and T. F. Paul of counsel) for libelant and Bogle, Bogle & Gates (E. C. Biele and M. B. Crutcher of counsel) for all respondents and claimants and the cross-libelants, the trial having proceeded and witnesses having been called and evidence produced on behalf of the libelant, the respondents, claimants and cross-libelants, the Court having considered all of the evidence, the exhibits, the trial briefs and supplements, and the arguments of proctors for each party, and being otherwise fully advised in the premises, and the Court having heretofore rendered its oral decision at the conclusion of the trial on December 1, 1958, and having entered its Findings of Fact and its Conclusions of Law in conformity with said oral decision, now therefore, it is hereby:

Ordered, Adjudged and Decreed:

1. That libelant States Marine Corporation of Delaware, a corporation, have and recover in this cause from the respondent tug Lea Moe, and the respondent barge Eclipse #15 in rem and the principals upon the respective release and cost bonds filed herein by the claimants of the tug Lea Moe and barge Eclipse #15, and the respondents The Pacific Tow Boat Company, a corporation, in personam, jointly and severally, its full damages in the sum of \$22,500, plus libelant's taxable costs and taxable proctor's fee in the total amount of \$233.90.

2. That as between the claimant of the said respondent tug<sup>1</sup> *Lea Moe* and the claimants of the said respondent barge *Eclipse No. 15*, the aforesaid total amount of damages, costs so adjudged to the libelant shall be paid by the said claimants respectively and their sureties on the release and cost bonds in equal parts, that is to say, one-half of said sum by the claimant of the said tug *Lea Moe* or its sureties and one-half thereof by the claimants of the barge *Eclipse No. 15* or its sureties; and that any balance of either of said halves which the libelant may not be able to collect from or enforce against either of said vessels, or their respective claimants and sureties, be paid by the other vessel, her claimant or sureties, and that the said vessels be condemned therefor.

3. That unless this decree be satisfied within ten (10) days after service of a copy of this decree with notice of its entry upon proctors for each of the claimants and representatives of the surety upon each of the release and cost bonds filed upon behalf of the respective claimants, the clerk of this court without further notice shall enter summary judgment against each of said sureties, on the respective release and cost bonds for the tug *Lea Moe* and barge *Eclipse No. 15*, after which execution may issue forthwith if this decree shall not have been satisfied or superseded.

4. That respondents and cross libelants *E. W. Stuchell, et al.*, doing business as *Eclipse Lumber Co.*, have and recover judgment against the respondent *The Pacific Tow Boat Company*, a corporation, its full damages in the sum of \$9,789.25,

plus any and all amounts for which they may be liable to pay, and pay, to libelant herëin respecting the Cotton State's damages.

5. That the cross-libel and all claims of cross-libelants E. W. Stuchell, et al., against the libelant States Marine Corporation of Delaware, a corporation, be and the same is dismissed with prejudice and said cross-libelants shall recover nothing from said libelant.

6. That the Stipulation for Costs as filed herein by the libelant be, and the same is hereby exonerated, and the principal and the surety thereon discharged from any and all liability with respect thereto.

Done in Open Court this 10th day of December, 1958.

/s/ JOHN C. BOWEN,

United States District Judge.

Prepared, approved and presented by:

SUMMERS, BUCEY &  
HOWARD,

/s/ CHARLES B. HOWARD,

Proctors for Libelant.

Approved as to form only.

BOGLE, BOGLE & GATES,

By /s/ E. C. BIELE,

/s/ M. B. CRUTCHER.

Receipt of copy acknowledged.

Lodged December 8, 1958.

[Endorsed]: Filed December 10, 1958.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that The Pacific Tow Boat Company, respondent-claimant, and E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., respondents-claimants and cross-libelants, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final decree entered in this action on December 10, 1958.

Dated at Seattle, Washington this 18th day of December, 1958.

BOGLE, BOGLE & GATES,

/s/ CLAUDE E. WAKEFIELD,

/s/ EDWARD C. BIELE,

Proctors for the Pacific Tow Boat Company and  
E. W. Stuchell, et al., d/b/a Eclipse Lumber Co.

[Endorsed]: Filed December 18, 1958.

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[Title of District Court and Cause.]

### ORDER FIXING SECURITY

This cause having come on to be heard on the motion of The Pacific Tow Boat Company, respondent-claimant, and E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., respondents-



claimants and cross-libelants, for stay pending their appeal to the United States Court of Appeals for the Ninth Circuit, and it appearing that appellants filed a timely notice of appeal; and it appearing that release and cost bonds in the amounts of \$30,-500 conditioned to abide by and answer the final decree of any appellate court were given on behalf of the tug Lea Moe and the scow Eclipse No. 15 with appellants as principals and sufficient sureties thereon, and it appearing that appellants furnished a supersedeas bond in form, amount and surety approved by proctor for the libelant, and it appearing to the Court that such release and cost bonds, and supersedeas bond should be accepted for such security as required of appellants, now therefore, it is hereby

Ordered, Adjudged and Decreed that the execution of any proceedings to enforce the decree entered herein on December 10, 1958, be stayed pending determination of respondents'-claimants' and cross-libelants' appeal from said decree, and it is further

Ordered, Adjudged and Decreed that release and cost bonds filed on behalf of the Eclipse No. 15 and the tug Lea Moe and the supersedeas bond in the amount of ten thousand dollars (\$10,000) executed by the Fidelity and Deposit Company of Maryland be accepted and stand as security for any decree rendered by the United States Court of Appeals for the Ninth Circuit in favor of libelants and operate to supersede the execution of the judgment entered in this action pending the final disposition



of the respondents'-claimants' and cross-libelants' appeal to the said United States Court of Appeals for the Ninth Circuit.

Done in Open Court this 29th day of December, 1958.

/s/ JOHN C. BOWEN,  
United States District Judge.

Approved and presented by:

/s/ EDWARD C. BIELE,  
Of Bogle, Bogle & Gates, proctors for The Pacific  
Tow Boat Company and E. W. Stuchell, et al.,  
d/b/a Eclipse Lumber Co.

Approved as to form and content and notice of presentation and entry waived.

/s/ CHARLES B. HOWARD,  
Of Summers, Bucey & Howard, Proctors for States  
Marine Corporation of Delaware.

[Endorsed]: Filed December 29, 1958.

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[Title of District Court and Cause.]

### SUPERSEDEAS BOND

Know All Men by These Presents:

That the Fidelity and Deposit Company of Maryland, a corporation, created, organized and existing under and by virtue of the laws of the State of Maryland, having its principal place of business in the City of Baltimore, State of Maryland, and duly authorized to carry on a general casualty insurance

business within the State of Washington, and in the courts of the United States, is held and firmly bound unto States Marine Corporation of Delaware, libelant, in the full and just sum of Ten Thousand Dollars (\$10,000.00), to be paid to the said States Marine Corporation of Delaware, its administrators, executors, successors, or assigns, to which payment, well and truly to be made, binds itself, its successors and assigns firmly by these presents.

Signed and Sealed this 29th day of December, 1958.

Whereas, on December 10, 1958, in an action pending in the United States District Court for the Western District of Washington, Northern Division, between States Marine Corporation of Delaware, as libelant, and The Pacific Tow Boat Company, respondent and claimant of the tug Lea Moe, and E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., respondents and claimants of the Scow Eclipse No. 15 and cross-libelants, Admiralty Cause No. 16271, a final decree was rendered in favor of the said libelant, States Marine Corporation of Delaware, and against The Pacific Tow Boat Company and E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., and the said respondents, claimants and cross-libelants, The Pacific Tow Boat Company and E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A.

Wyman, D. E. Wyman, and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., having filed a Notice of Appeal from such decree to the United States Court of Appeals for the Ninth Circuit:

Now, Therefore, the condition of this obligation is such, that if the said respondents, claimants and cross-libelants shall prosecute their appeal to effect and shall satisfy the decree in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if such decree is affirmed, or shall satisfy in full such modification of the decree and such costs, interest and damages as the said Court of Appeals may adjudge an award, but not exceeding the amount of Five Thousand Dollars (\$5,000.00) as to The Pacific Tow Boat Company and Five Thousand Dollars (\$5,000.00) as to E. W. Stuchell, William D. Carpenter, Harry W. Stuchell, Jr., M. A. Wyman, D. E. Wyman and M. H. Wyman, co-partners doing business as Eclipse Lumber Co., then this obligation to be void: otherwise to remain in full force and effect.

[Seal]

FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND.

By /s/ GUERTIN CARROLL.

Attorney in Fact.

Approved as to form, amount and surety.

/s/ CHARLES B. HOWARD.

Of Summers, Bucey & Howard, Proctors for States  
Marine Corporation of Delaware.

/s/ EDWARD C. BIELE,  
Proctor for Eclipse Lumber Co. and the Pacific  
Tow Boat Company.

Approved in Open Court this 29th day of December, 1958.

/s/ JOHN C. BOWEN,  
United States District Judge.

[Endorsed]: Filed December 29, 1958.

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[Title of District Court and Cause.]

#### STATEMENT OF POINTS ON APPEAL

Appellants intend to rely on this appeal as follows:

1. The court erred in applying the presumption of fault against moving vessels under the circumstances of this matter when the integral and close-coupled scows Eclipse No. 15 and No. 25 were already attached to the Cotton State and controllable by her crew for some time before collision.

2. That the court erred in requiring a lookout or lights on the scow Eclipse No. 15 when the visibility was good, when those on the Cotton State by their own testimony could have seen what was going on, and the integral and close-coupled scows had been attached to the Cotton State for some time before collision.

3. That the court erred in not finding negligence

on the Cotton State when those on her failed to keep a lookout astern and without appreciation of danger or good seamanship started up and then allowed her propeller to rotate and to chew up the scow Eclipse No. 15 for 4 or 5 minutes thereby not avoiding or minimizing damages.

4. That the court erred in finding that after the integral and close-coupled scows were attached to the Cotton State the tug Lea Moe allowed the Eclipse No. 15 to drift into collision with the steamer's propeller.

5. That the court erred in imposing in rem liability on the scow Eclipse No. 15 which was a "dumb" vessel at all times under control of either the Cotton State or the tug Lea Moe.

6. That the court erred in dismissing the cross-libel of appellant E. W. Stuchell, et al., d/b/a Eclipse Lumber Co.

7. That the court erred in decreeing liability upon appellant, The Pacific Tow Boat Company, the tug Lea Moe and the scow Eclipse #15.

BOGLE, BOGLE & GATES.

By /s/ E. C. BIELE,

Proctors for Appellants, The Pacific Tow Boat Company and E. W. Stuchell, et al., d/b/a Eclipse Lumber Co.

Receipt of copy acknowledged.

[Endorsed]: Filed February 9, 1959.



In the District Court of the United States for the  
Western District of Washington, Northern  
Division

In Admiralty—No. 16271

STATES MARINE CORPORATION OF DELA-  
WARE, a Corporation,

Libelant,

vs.

Motor Vessel LEA MOE, Official number 241972,  
Her Engines, Tackle, Apparel and Furniture,  
and Barge E-15, Her Fittings and Equipment,

Respondents,

and

THE PACIFIC TOW BOAT COMPANY, a  
Corporation, and E. W. STUCHELL, WIL-  
LIAM D. CARPENTER, HARRY W. STU-  
CHELL, JR., M. A. WYMAN, D. E. WYMAN  
and M. H. WYMAN, Co-partners Doing Busi-  
ness as ECLIPSE LUMBER CO.,

Respondents-Claimants.

E. W. STUCHELL, WILL D. CARPENTER,  
HARRY W. STUCHELL, JR., M. A. WY-  
MAN, D. E. WYMAN and M. H. WYMAN,  
Co-partners, Doing Business as ECLIPSE  
LUMBER CO.,

Cross-Libelants,

vs.

STATES MARINE CORPORATION OF DELA-  
WARE, a Corporation,

Cross-Respondent.



STATEMENT OF FACTS

Be It Remembered, that the above-entitled and numbered cause was heard before the Honorable John C. Bowen, a Judge of the above-entitled Court, beginning Tuesday, November 25, 1958, at 3:40 o'clock p.m.

The libelant-cross-respondent was represented by Mr. Charles B. Howard and Mr. Thomas F. Paul, of Messrs. Summers, Bucey & Howard, Attorneys at Law.

The respondents, respondents-claimants and cross-libelants were represented by Mr. Edward C. Biele and Mr. M. Bayard Crutcher, of Messrs. Bogle, Bogle & Gates, Attorneys at Law.

Whereupon, the following proceedings were had and done, to wit:

The Court: If Counsel are ready now to proceed I will hear so much of your opening statements as you are willing to give. Are any other Counsel interested in this matter?

Mr. Howard: Mr. Paul will be associated with me, your Honor, in the case.

Mr. Biele: Your Honor, Mr. Crutcher will be associated with me. He is in the office right now. [2\*]

The Court: Then we will hear libelant's opening statement from the present station of Counsel if libelant is ready.

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Mr. Howard: May it please the Court.

The Court: Mr. Howard.

Mr. Howard: And Counsel. In this case the States Marine Corporation of Delaware, the libellant, as the owner of a merchant vessel known as the Cotton State seeks to recover its damages sustained in an accident at Everett, Washington, on January 10, 1957, while that vessel, the Cotton State, was moored at the Port Dock at Everett for the purpose of loading cargo.

We expect the evidence in the case to show that at that time and during a period of darkness the tug Lea Moe, which is one of the respondent vessels, towing two barges designated as E-15 and E-25, which barges were loaded with lumber, were towed alongside or to a position alongside the off-shore side of the vessel at the dock and due to the manner in which those vessels were handled in the course of bringing them alongside the vessel by the tug the aftermost barge, being the E-15, was allowed to drift or sag down under the stern counter of the ship, contacting the propeller of the ship and causing damage to the propeller of the ship as well as to the barge and some lost lumber on [3] the barge.

We expect the evidence to show, if the Court please, that in accordance with the type of machinery that was used to propel the Cotton State and the customary practice with turbine driven ships of that kind, as soon as the ship had been docked at Everett, Washington, the engineer on watch placed the engine in what is known as turning gear

or jacking gear, which is an electrically driven mechanism in the engine room of the vessel which is used for the purpose of slowly turning the propeller and the shaft and the turbine of the main engine to insure that the machinery and particularly the part in the turbine will cool down uniformly and not cause any damage to the equipment; that as a result of that turning of the wheel when the barge was allowed to come in contact with the stern and the propeller of the vessel there was damage sustained to three of the four blades of the propeller of the Cotton State. The damage was subsequently repaired while the vessel was placed on dry dock at Seattle.

We have agreed between the parties, between Counsel, as to the full amount of the damages claimed by the libelant which is set forth in the pretrial order in the amount of \$22,500, and in turn we have agreed that the damage which is claimed on the cross-libel against [4] the States Marine Corporation sustained by the barge and as a result of the loss of cargo off the barge is in the amount of \$9,789.25.

We contend on behalf of the libelant that there were various faults involved by the respondents in the operation of the tug and barge.

Principally we expect to prove that at the time that this accident occurred the barges were still in the control of the tug, they had not completed the delivery of the barges to the vessel; that the operator of the tug, the master of the tug was the one that determined where and how the barges

were to be brought alongside the vessel and where they were to be tied up; that there was in fact only one line securing the leading barge to the vessel at the time the accident occurred and that there were no mooring lines whatsoever securing the aftermost barge in the tow to the vessel in any way. In other words, it was not attached to the vessel in any way. The two barges were coupled together and the only connection between the ship and the barges and the tug was one mooring line which had been passed to the leading barge, which was not the barge which was involved in the accident.

We also expect the evidence to show that at the time of this accident it was dark; that the tug [5] carried certain navigation lights but that there were no lights whatsoever burning on the barge or either one of the barges; that as a result of that failure to display the regulation type of lights on the barges after the period of sunset it was impossible for anyone on the deck of the ship to determine exactly what the length of the barge tow was or to ascertain whether there was danger of any contact between the stern of the vessel and the barge.

We expect the evidence to also show that the tug was manned by a master and two deck hands, that there were no other personnel available to serve on the barges during the course of this movement of the barges alongside the ship and that by reason of the inadequate number of personnel which were carried on the tug and barges they were not sufficient persons to advise the master of the tug

as to what the relative position of the barges was with respect to the stern of the vessel or to provide enough personnel to handle barge mooring lines that might be passed between the barge and the vessel.

We expect the evidence to show that what was done on the Cotton State was entirely proper procedure as far as the engine department is concerned; that the vessel was properly manned; that the operation of the [6] turning gear was a customary practice and in fact was known to the master of the tug; that there was no default or neglect of any kind insofar as the personnel on the deck of the ship are concerned; that there were adequate men available on the deck of the ship to handle barge mooring lines or to do any other work that was necessary in connection with the securing of the barges.

We contend that this is a case where the entire fault for the collision was that of the respondents and that there should be no division of the damages and that the libelant should recover in this case the full amount of its damages in the stipulated amount of \$22,500.

The Court: I will hear respondent's opening statement.

Mr. Biele: Thank you. May it please the Court, I represent Pacific Tow Boat Company, which owned and operated the tug Lea Moe. I also represent Eclipse Lumber Company, a partnership, which owned the scows Eclipse No. 15 and Eclipse No. 25.



Those two scows were loaded with lumber which was to be loaded aboard the libelant's steamer Cotton State. For the purpose of shifting the scows alongside the Cotton State the Eclipse Lumber Company employed the [7] tug Lea Moe and respondent Pacific Tow Boat Company.

There are two sides to this, or I should say the evidence upon which we rely will come from the witnesses of the libelant as well as from the witnesses produced on behalf of the respondents.

From the libelant's witnesses we expect the evidence will show that the visibility at this time was good and that there was no doubt as to what was going on at the time.

We expect to show that the chief officer of the Cotton State was on deck when the scows were brought alongside and that he was there to receive them; that the scows were brought alongside and as they approached on the tug, the two scows being close coupled and one aft of the other in tandem, someone on the Cotton State ordered the scows to be shifted or their positions changed from the manner in which they were being brought alongside; that to do this the captain of the tug Lea Moe spotted the scows directly where he was ordered to do so and that thereupon the mate of the Cotton State passed a line to the scows and that that line was secured by the deck hand on the tug over the same towing bitt which the tug had used to bring the scows alongside; that that line was then secured on the Cotton State and that before the tug took in its line it was assured that [8] the steamer



had the scows in tow, in charge and control; that thereupon the tug cast off and backed out and proceeded to take a position on the stern to pick up the trailing scow; that while they were doing that the propeller of the Cotton State was started up without warning to anyone; that as the propeller was started up the time at which it was started was exactly the time that the log of the Cotton State shows that the scows were brought alongside, 1840 hours, the propeller was started up and the Cotton State took the scows alongside; that when the propeller was started up there was no warning or assurance given to the engineers in the engine room of the Cotton State that the area was clear or that scows were alongside or that there was any reason to start the propeller up; that good seamanship and general prudence required that the stern area be checked; that in this case that was not done.

The evidence will further show from libelant's own witnesses, your Honor, that they started up this jacking gear, which turns the propeller over at a speed of seven to eight minutes per one turn or revolution, and that the propeller was in contact with the scow, Eclipse No. 15, for three to four minutes, and that during that time there were three blades of the propeller damaged and that the propeller was rotating in—as you [9] look at the stern of the vessel from the stern of the vessel it was rotating in a counter-clockwise direction, and that the propeller came up under the scow and

damaged it and hit it at least three times over a period of three to four minutes.

The Court: The scow?

Mr. Biele: The scow, your Honor. The propeller hit the scow at least three times because three blades of the propeller were damaged.

Now, during that three to four minute period the evidence will show that the chief mate on the Cotton State had a line on the scows. He did nothing to control the situation. In fact, he may have pulled the scows into the propeller. The only reaction that he did was to run to get a flashlight, although there was a flashlight available by one of the crew members that was right alongside of him; that in those three or four minutes he gave absolutely no warning to the tug; that in that time he could have stopped the propeller by merely calling up the enging room, a matter of a few seconds to throw out a switch in the engine room, and that the propeller would have been stopped and all or substantially all of the damage would have been averted.

We will also show, your Honor, that the manner in which the engineers on the Cotton State started up [10] the propeller was based upon a series of assumptions, none of which are good seamanship, and in the present case which were not carried out, and particularly that there was no check made of the stern area by anyone on deck to see that the stern of the Cotton State was free and clear of possible danger.

We will also show from the witnesses of the re-

spondents, your Honor, that there was no warning given whatsoever that the propeller was going to be started up.

We will also show the makeup of the scows, that they were an integral unit. That has been stipulated in the pretrial order, that they were tied close coupled with a foot or so clearance. That the manner in which the master brought the scows alongside was directed by those on the Cotton State; that the deck hand of the tug secured the line which was passed and substituted for the line of the tug. We will prove that the explanation for this was either that the mate failed to hold the scows or that he pulled them back aft, failing to keep in mind that the propeller was turning over. We will show that at the time the deck hand was on the scows and after the first line had been secured he heard a noise in the engine room which indicated that the propeller was being started up and that that was the time after the Cotton State had control of [11] these scows that the propeller without warning was started up.

We will also show that the tug was never in contact with these scows at any time after the Cotton State took control of the tow.

We will also show that there was no one from Eclipse Lumber Company, the other respondent, on the tug, on the steamer, the Cotton State, or on the scows or had anything whatsoever to do with this matter, and that in this case the Eclipse Lumber Company is a completely innocent party, had nothing whatsoever to do with the circumstances, and

that it should be awarded its damages in whole from the cross-respondent States Marine Corporation or alternatively, if there is a mutual fault, that the damages should be divided between the Cotton State, States Marine, Mr. Howard's clients, and The Pacific Tow Boat Company tug Lea Moe.

Thank you, your Honor.

The Court: Are there any depositions to be presented in this case by either litigant?

Mr. Howard: Yes, your Honor.

Mr. Biele: There are a number of them, your Honor.

The Court: Which would you prefer, to spend a half an hour or so or a little longer reading [12] depositions, or introducing live testimony?

Mr. Howard: I would like to read one deposition first, your Honor.

The Court: Personally I would like to get the depositions off as soon as possible. Were any depositions taken of rather salty language men who forget that it is going to be reported and indulge in profanity or some other obscene language that you know of?

Mr. Howard: I can't think of any instance.

Mr. Biele: I don't know of any, your Honor.

The Court: You may proceed.

Mr. Howard: I would like to offer the deposition of Mr. Judy.

The Court: J-u-d-y?

Mr. Howard: J-u-d-y.

The Clerk: M. Judy.

The Court: Whoever is a good speedy reader

as to each question and answer, I will be glad to assign the job to them, and let us proceed.

Mr. Howard: Would you like me to take the stand, your Honor?

The Court: I should think you might prefer to read the answers.

Mr. Howard: I would, your Honor. [13]

Mr. Biele: Mr. Paul is——

The Court: Mr. Paul, will you read the questions?

Mr. Howard: I don't have enough copies of the deposition to go around.

The Court: Mr. Paul, I would like you to read rather expeditiously. Do not dwell too long on the words, try to speed it up.

Mr. Paul: Shall I proceed now, your Honor?

The Court: Yes, and unless there is objection you may skip down to Page 3 where it says Direct Examination by Mr. Biele.

Mr. Howard: The Judy deposition starts on Page 55, your Honor.

The Court: Skip to Page 55. These pages, unfortunately, are not lined. Down to where the direct examination begins, please.

(Thereupon, the deposition of Maurice Judy was read as follows:)



## DEPOSITION OF MAURICE JUDY

"Q. Mr. Judy, where do you live?

"A. 813 West 14th Street, Austin, Texas. That is my home address. That is my daughter's address.

"Q. What license do you have?

"A. Master's license.

"Q. How long have you had that license? [14]

"A. Well, I have had the master's license for about eleven years. This particular license I have had for a year now. You see, you have to get that renewed every five years.

"Q. How long have you been employed by States Marine Company?      A. Since 1946.

"Q. How long have you been employed aboard the Cotton State?

"A. Well, I made one trip and then went on vacation, and then I just came back on this trip. I just had been back from vacation a couple of days when it was in Everett.

"Q. You had just returned from your vacation?

"A. Yes, about two days before, one or two days.

"Q. Where did you board? In Seattle?

"A. In Seattle, yes.

"Q. What were you employed as while the vessel was in Everett during January, 1957?

"A. In Everett?

"Q. Yes.

"A. When we was docking I was on the bridge.

"Q. What were you employed as? What was your position?      A. Oh, fourth man.

"Q. Had you been other than fourth man on the ship before?



(Deposition of Maurice Judy.)

“A. I was third mate on the trip before when I went on vacation, third mate under Green. [15]

“Q. Were you watch officer when the vessel docked?

“A. I was on the bridge docking, yes. I wasn't exactly—the watches were broken, see. The chief mate, the second mate and myself was all on duty when we was docking.

“Q. What was your duty when the vessel docked?

“A. Handling the telegraph on the bridge.

“Q. Where do you do that from?

“A. On the bridge in the wheelhouse.

“Q. After the vessel finished docking did you remain on watch?

“A. No. As soon as I finished securing the bridge and writing up the log, then I was off watch.

“Q. What time did you finish writing up the log?

“A. Oh, I don't know. What time did we get the finished-with-engines? About 20 minutes, 20 or 25 minutes. I mean I can't say.

“Mr. Biele: Will you mark this as Respondent's Exhibit 3.”

Mr. Howard: May I have the brief case? It has the exhibits in it. It's by Mr. Paul there.

The Clerk: It will be Libelant's Exhibit No. 1.

(A rough deck log was marked Libelant's Exhibit No. 1 for identification.)

Mr. Howard: Shall I proceed, your Honor? [16]

(Deposition of Maurice Judy.)

The Court: You may.

(The reading of the deposition was continued as follows:)

“The Witness: Probably about 20 minutes, you know. I mean after you get the finished-with-engines, you pull the flags down and secure everything on the bridge and write up the log. Probably it is 20 minutes later. I believe the third mate was on watch after that from there in, if I am not mistaken.

“Q. You are referring to what has been marked as Exhibit No. 1. Do you recognize that?

“Mr. Howard: What is this book?

“A. It is the log book.

“Q. (By Mr. Biele): It is the log book?

“A. That is the rough log, the deck rough log book.

“Q. Did you make any entries in that book?

“A. Yes, I made entries in it. I made these entries here where my signature is.

“Q. What are you referring to?

“Mr. Howard: Do you want him to read those entries?

“Mr. Biele: Yes.

“Mr. Howard: Do you know when you started here?

“A. Well, I probably started here. This is when I came on.” [17]

Mr. Howard: He reads a quote then, your Honor, from the log book.

(Deposition of Maurice Judy.)

“ ‘1827 first line on dock forward; 1835 gangway down; 1935 finished with engines. All secure, port side to, Pier No. 1, South Everett, Washington. Pilot away. Propeller boards and lights over stern.’

“Q. Is that the last entry you made?

“A. That is the last entry I made, yes.

“Q. What time of the day did you make that entry?

“A. Well, 1835, and then I wrote, you know, this stuff up. You see, you put this in the bell book after you get docked. You don't have time to write it—you take it from the bell book after you dock, and then you write all this up in the log here, all this stuff that you write as you go along.

“Mr. Biele: Will you mark this Respondent's Exhibit 4.”

Mr. Howard: Your Honor, that's the photostat that's in the original bell book.

The Court: Do you wish it marked?

Mr. Howard: Yes, your Honor. It's in there. I suggest we take all of those out now.

The Court: Does Mr. Biele have an interest in keeping in his own mind identified these respective exhibits that are being now detached from this group of [18] depositions?

Mr. Biele: No, your Honor, it's perfectly acceptable.

The Court: You have in mind a clear picture

(Deposition of Maurice Judy.)

of which ones are being removed and which ones are there, do you not?

Mr. Biele: Yes, your Honor.

The Court: The manual job of getting them in and out calls for separating them now so they will be available for quicker reference.

Mr. Howard: Mr. Bruff has the one to be identified marked at this time, your Honor.

The Court: It will now be marked.

The Clerk: Libelant's Exhibit 2.

(Photostatic copy of page of deck bell book was marked Libelant's Exhibit No. 2 for identification.)

The Court: Libelant's Exhibit 2 has now been marked. It purports to be a photostat of a page of something.

(The reading of the deposition was continued as follows:)

"Q. (By Mr. Biele): The reporter has handed you what he has marked as Libelant's Exhibit 2. Do you recognize that?

"A. This is the bell book. That is the deck bell book. [19]

"Q. Is that a record of the ship?

"A. Yes; it is a record of the bells, and so on, that we give up on the bridge.

"Q. Did you make any entries in that?

"A. I made these entries.

"Q. What entries are you referring to?"

(Deposition of Maurice Judy.)

The Court: Mr. Biele, I think you must be mixed up already on the identification of the exhibits. The first main thing, the big book, is the deck log and that is No. 1.

Mr. Biele: That's No. 1, yes, your Honor.

The Court: No. 2 is a page out of something, a photostat of a page out of something. Let him see it. That is No. 2. That is not what you have been referring to in your language.

Mr. Biele: Your Honor, I think that was Exhibit 4 in the deposition but it's now Exhibit 2 in the trial.

The Court: Very well, let it be so understood then. Is that agreeable to you? Do you think that is proper?

Mr. Howard: Yes, your Honor.

The Court: Very well. Then the reporter's notes are correct as to the figure reference. I wish I knew what you are going to call it. Does anyone know [20] what it may be called? This No. 2 is merely one page.

Mr. Howard: It is described by the witness, your Honor, as a deck bell book. It's a photostat page out of the deck bell book.

The Court: You may proceed.

Mr. Howard: Is that the top of the next page?

Mr. Biele: Yes.

(The reading of the deposition was continued as follows:)

"A. 1-10-57, Everett, Washington.

(Deposition of Maurice Judy.)

of which ones are being removed and which ones are there, do you not?

Mr. Biele: Yes, your Honor.

The Court: The manual job of getting them in and out calls for separating them now so they will be available for quicker reference.

Mr. Howard: Mr. Bruff has the one to be identified marked at this time, your Honor.

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(Deposition of Maurice Judy.)

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Mr. Biele: That's No. 1, yes, your Honor.

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Mr. Howard: It is described by the witness, your Honor, as a deck bell book. It's a photostat page out of the deck bell book.

The Court: You may proceed.

Mr. Howard: Is that the top of the next page?

Mr. Biele: Yes.

(The reading of the deposition was continued as follows:)

"A. 1-10-57, Everett, Washington.

(Deposition of Maurice Judy.)

“Mr. Howard: Did you make all the entries on that page?

“A. I made these entries.

“Mr. Howard: The first entry is 1813½.

“A. Dead slow ahead.

“Mr. Biele: Let’s stick to that page.

“A. Yes; I made all those entries.

“Q. You made all the entries on the left-hand page?

“A. That is right, on the left-hand page for that 1-10.

“Q. When did you make those entries?

“A. Well, I made those at the time that is on there, because this is the one we work with. As they ring the telegraph you put those down. This is temporary. At the time you make the entry is the time you make it.

“Q. Was the last event during the docking procedure finished-with-engines? [21]

“A. 1835, finished with engines; all secure, port side to, Pier 1, South Everett, Washington. Then I take this and I write the rough log.

“Q. You write the rough log?

“A. You don’t have time to do that as you go along. You have to do this—you write this at the end of the watch.

“Q. Upon completion of your writing of the rough log your duties were finished?

“A. Yes; after I take the flags down and secure the bridge, you know, everything on the bridge

(Deposition of Maurice Judy.)

—see that everything is secured, the binoculars and everything put away, and so forth.

“Q. Did you do anything about placing warning signs on the stern?

“A. The second mate does that. He is aft. It is his job. When he goes up he always puts those out.

“Q. Did you see him put the warning signs out?

“A. I didn’t see him do it, but he does it all the time, and I seen the signs afterward so I know they were there.

“Q. Had you seen the signs over when you made these entries in the log?

“A. No; I didn’t actually see it.

“Q. You assumed they were over when you made this log?

“A. Well, he always puts them over. I seen them after I [22] went out; after this happened I seen them, the boards over. I know he put them over.

“Q. Had you seen the boards before this event, this damage to the propeller, occurred?

“A. Actually I didn’t see it, no. The second mate, I know he put them over.

“Q. What was your first awareness that anything had happened?

“A. Well, the mate came down—I think it was the second or third mate’s room, and the mate come in——

“Q. Who was the mate?

“A. Mr. McLaughlin.

“Q. Was he chief officer?                      A. Yes.

(Deposition of Maurice Judy.)

“Q. He came to the room?

“A. Yes; he came in and said something about something hit the propeller. I don't know exactly the words. I don't know what words he used. But we all went back.

“Q. Who was in the room with you when this occurred?

“Mr. Howard: If you know.

“A. Oh, when I secured everything on the bridge I was by myself up there.

“Mr. Howard: In the mate's room?

“Mr. Biele: In the mate's room, when the chief officer told you about it?

“A. I believe it was the second mate. I am not sure, but I [23] think it was the second mate.

“Q. Now, had you been relieved of your watch by the second mate after finishing up?

“A. No. Here is the way it is, you see: We have a night mate. The night mate is on, too. We have the cargo watch. The third mate, as soon as we dock, he is on cargo watch. He was out on deck, Mr. Edwards.

“Q. Had you been relieved of your duties?

“A. Oh, yes. I am relieved of my duties when I leave the bridge.

“Q. Who was the night mate at this time?

“A. I will have to look and see here.

“Q. If you know.

“A. Well, it is in the log book here. No; wait a minute. At 1905 he came aboard.

“Q. Who was the night mate, if you recall?

(Deposition of Maurice Judy.)

“A. The night mate, A. Dugan, License 183029.

“Q. Had you seen the night mate before this was reported to you?

“A. No; I don't believe I did. No; I guess we let the other one go in Seattle, and this fellow came aboard over here, because here is where he came aboard, at 1905.

“Q. Was the third mate in the room with you when this was reported?

“A. No; the third mate, I believe, was on deck. He was on [24] watch.

“Q. Did you see the scows coming alongside the Cotton State?      A. Up by the hatch of No. 2?

“Q. Yes.

“A. Yes; I saw them coming up there, but the mate was down on the deck and he got that information.

“Q. I am referring to when the scows were first brought alongside the ship. Did you observe them?

“A. No. 1840 they brought the barges alongside. 1845 is when that barge hit the propeller. That I didn't see.

“Q. Did you observe the tug bringing the scows up alongside?

“A. Well, I didn't notice that too much, no. I seen the barges alongside, but I didn't pay too much attention to it.

“Q. Where were you when you saw the barges alongside?      A. I was on the bridge.

“Q. Were you still writing your log then?

“A. Yes; I was writing the log then, taking the



(Deposition of Maurice Judy.)

weather, and so on and so forth. I didn't pay too much attention. I seen the barges alongside at No. 2. That is all I seen.

"Q. Now, where was the tug when you made this observation of yours?

"A. Well, I don't remember exactly. I think it was alongside the barge. I am not sure. I think he delivered the [25] barges up there——

"Q. Do you recall in what way the barges were made up?

"A. No. You mean when they brought them up to the ship?

"Q. Yes.

"A. No; I don't remember. I believe they were in tandem. I couldn't say for certain.

"Mr. Howard: If you don't know, don't try to say, Mr. Judy.

"A. I think when they come along—I believe he had them towing astern. I am not sure. No; I can't say for sure.

"Q. (By Mr. Biele): You saw these barges up by No. 2, you said?

"A. I don't know whether it was 2 or 4. I think they got them along the starboard side. I didn't pay too much attention to where he put them right then. I just noticed them coming along.

"Q. Wait a minute. You were on the bridge, were you not?

"A. Yes. I just looked out and I seen them coming and I kept on with my work.

"Q. Isn't the bridge at the forward part of the



(Deposition of Maurice Judy.)

superstructure of the vessel? A. Yes.

“Q. The house of the vessel?

“A. Yes; it is.

“Q. The barge was forward of where you [26] were?

“A. Well, I don't know. I might have been out on the wing of the bridge taking the temperature or something. I don't know exactly. You see things like that—I didn't know there was any accident. You can recall things that you have done, but I can't say exactly where I was at. I was on the bridge, I know that, but I don't know exactly what part of the bridge I was on. But as far as the barge striking, or whatever happened, I didn't see it.

“Q. When the vessel finished tying up was anyone placed back aft?

“A. The second mate ties up.

“Mr. Howard: Were you through with your question, Mr. Biele?

“Q. (By Mr. Biele): Was anybody placed back aft when the vessel tied up?

“A. Sure. The second mate and sailors.

“Q. Was anybody stationed back aft?

“A. You mean after the vessel was all secured?

“Q. Yes.

“A. No. There is nobody stationed back aft, no. You see, the mate that goes on watch, his duties are to see that all the hatches are working and to take care of all over the ship. Now there was the

(Deposition of Maurice Judy.)

third mate, but what part of the vessel he was in, I don't know. [27]

"Q. Did you detail anyone to observe the approach of the barges alongside?

"A. Me? No; I haven't got anything to do with detailing nothing.

"Q. Was anyone stationed back aft as a lookout?

"A. Nobody is stationed as a lookout when the ship——

"Q. Just a minute, Mr. Judy. I am not finished yet.

"Mr. Howard: Just listen until you are sure that he has given you the full question before you try to answer. Be sure you hear the full question.

"The Witness: I know.

"Mr. Howard: Just wait now for the question.

"Q. (By Mr. Biele): Was there anyone, to your knowledge, stationed back aft on deck in the vicinity of the propeller to watch or look out as the vessels approached?

"Mr. Howard: At what time?

"The Witness: At what time? After the ship was secured?

"Q. (By Mr. Biele): Immediately after security.

"A. No; it is not a practice of having a lookout back aft after the vessel is secured. It is not a practice. I don't say there wasn't anybody back there.

"Q. Were you aware that scows were to be landed alongside the starboard side?

(Deposition of Maurice Judy.)

“A. When we docked? [28]

“Q. Yes.

“A. No; I wasn't aware of what they were going to do at all.

“Q. Were you aware that cargo was to be loaded?

“A. Yes, but I didn't know whether it was going to be loaded from barges or scows or from the dock. Nobody tells us that.

“Q. Were you aware that the jacking gear on the propeller was engaged shortly after the vessel finished tying up?

“A. That will have to be answered by the engineers. I don't know.

“Q. You were not aware that it was?

“A. I don't know, I tell you. I don't know whether it was or whether it wasn't.

“Q. Was that ever called to your attention?

“A. It never is. The only time they call it to our attention, when they want to turn the propeller over when they are in port, then they ask us to go back and see if the stern is clear before they turn the propeller over.

“Q. Is that done when they engage the jacking gear?

“A. Yes; that is right. Before they turn it over they ask one of us to go back to see if the stern is clear. In this case, I don't know. I can't say, because we had just docked.

“Q. No one apprised you of that fact, in any event?

(Deposition of Maurice Judy.)

“A. Nobody said one way or the other. [29]

“Q. What is the name of the second mate?

“A. L. Cicero.

“Q. That is the gentleman that was in the room with you?

“A. Yes, if I recall right. I believe it was the second mate.

“Q. What is the name of the third mate that was on the vessel at that time?

“A. Mr. Edwards.

“Q. You don’t know what he was doing, as I recall you said?

“A. Well, he was down on the deck. I don’t know what part of the vessel he was on. He was on the cargo watch. What part of the vessel he was on, I don’t know.

“Q. Who was the master of the vessel?

“A. The master?

“Q. Yes. A. C. W. Meier.

“Q. Was he with you in the second mate’s room? A. No.

“Q. Do you know what he was doing?

“A. He probably was in his room. He just came down from the bridge. He was on the bridge when we got in, and when we were finished with the engines he goes below.

“Mr. Howard: Mr. Judy, if you don’t know, don’t try to speculate where he was. If you don’t know where he was, don’t say he was probably somewhere. [30]

“A. He leaves the bridge, and where he goes——

(Deposition of Maurice Judy.)

“Mr. Howard: You just don’t know where he went.

“Q. (By Mr. Biele): Was the master on the bridge when you wrote up the log?

“A. Not when I wrote it up. He was up there until we finished with the engines.

“Q. Until 1835?

“A. Yes. Then he leaves, and I do the rest of the stuff.

“Q. Now, do you know whether any preparations were being made to handle the lines from the scows that might come alongside?

“A. Whether we had made any preparations?

“Q. Yes.

“A. Well, the ship hadn’t made any preparations for lines, but the mate and the crew was out and I believe they took the lines. They were still tying up. They were still on deck, I believe. It has been a long time ago. I am not sure. I couldn’t say for sure whether the ship’s crew handled the lines, but I imagine they did.

“Mr. Howard: I ask you again, Mr. Judy, not to imagine or speculate. If you don’t know, just say you don’t know. That is all we are interested in, is what you know.

“The Witness: I didn’t see them take the [31] lines, no.

“Mr. Howard: All right.

“Q. (By Mr. Biele): Now, Mr. Judy, have you in your seafaring employment taken scows alongside vessels?



(Deposition of Maurice Judy.)

“A. What do you mean, have I taken them alongside? Have I secured them?

“Q. Have you secured them alongside?

“A. I have secured scows or barges at times, yes.

“Q. Have you secured them?

“A. All we do is handle the lines. We just make the lines fast on the deck, and they do the securing on the barge.

“Q. Have you observed the placing of a watch or a lookout in the vicinity of the propeller when scows are likely to come close to the propeller?

“A. If the mate on watch sees a barge coming he generally looks himself, the mate on the cargo watch. He is a general lookout. I mean there is times that you are doing something else that you can't see, but, as a rule—at least, I do when I am on watch; if I see a barge coming I watch it.

“Q. Do you also detail a seaman to go back in the vicinity of the propeller if a barge is——

“A. That is not the practice. If a seaman is off watch—when they get through tying up they are off. We don't have a seaman on watch; that is, at night, you know; [32] just the mate is on watch, the night mate and the ship's mates.

“Q. If you had a crew available, would you do that?

“A. Well, if I had a crew available, I would—maybe I would. But it is not the practice of putting a crew back there. It is the practice of the mate on watch to look out for that stuff.

(Deposition of Maurice Judy.)

“Q. Does the mate do the tying up completely by himself?

“A. Well, it all depends. If you are out there by yourself you will take the lines. If you have any sailors around, they will take the lines. Sometimes a barge comes along and there isn't anybody there, and then you take the lines. But if you had sailors, why, you would have them take the lines.

“Q. If you had a sailor available, would you detail him to observe the approach of a barge or scow in the vicinity of the propeller?

“A. You mean me, personally?

“Q. Yes.

“A. No; I wouldn't detail a sailor to do that job. I would do it myself.

“Q. You would do it yourself?

“A. Personally if I was on deck, yes.

“Q. So if you had any doubt about it——

“A. I would do it myself, yes. [33]

“Q. Is there a means of communications from the deck of the Cotton State to the engine room?

“A. Yes.

“Q. From back aft, in the vicinity of No. 5?

“A. Well, there is a phone on the poop deck in the steering station up on top.

“Q. Is that connected to the engine room?

“A. Yes; it is connected all over. I mean it is a telephone—it is a dial system.

“Q. You can talk any place in the ship?

“A. I can converse with the engine room or——

“Q. Is there any telegraph system or means of

(Deposition of Maurice Judy.)

transmitting orders from the after part of the deck?      A. A telegraph back aft?

“Q. Yes.

“A. No. The only thing you have is the telephone. The telegraphs are on the bridge, one on each wing and one on the wheelhouse.

“Mr. Biele: I believe that is all.

“Cross-Examination

“By Mr. Gantt:

“Q. I just have a couple of questions, Mr. Judy. I believe you said you didn’t actually see the scow or barge hit the propeller? [34]

“A. Oh, no; I didn’t see that.

“Q. You were not anywhere in that vicinity?

“A. No.

“Q. You were below decks?

“A. No; I didn’t see that at all. I was either on the bridge writing the log or I was down below at the time it happened. I imagine I was still on the bridge. I may have been, or I may have been down below. I don’t know just how long it takes until I leave the bridge—I write the log and leave. I never pay attention any time to what time I leave the bridge exactly. I don’t look. There is no occasion for me to look, so if I were to tell you the exact time I left the bridge, that would be an exception. I mean, I don’t”——

Mr. Howard: That concludes the deposition.

Mr. Biele: That concludes the deposition.

The Court: This deposition is received as a part of the libelant's case in chief with like effect as if the witness were present and testifying in person under oath. You may proceed with the next deposition. I think we can go forward at least for a bit longer. McLaughlin and Green and Boltz are in this same volume.

Mr. Howard: Your Honor, some of those depositions of the men that were taken there, we will have some of those in person. I would like to call as [35] the next witness Mr. McLaughlin.

The Court: Come forward and be sworn as a witness.

ETHON C. McLAUGHLIN

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

Q. Will you state your full name and your residence address, please, sir?

A. Ethon C. McLaughlin.

The Court: How do you spell the first word?

A. E-t-h-o-n.

The Court: And the middle initial?

A. C.

The Court: McLaughlin?

A. Yes, sir.

The Court: L-a-u-g-h-l-i-n?

A. Yes, sir.

(Testimony of Ethon C. McLaughlin.)

The Court: Where did you grow up as a youth, Mr. McLaughlin?

A. In the West Indies, in Grand Cayman.

The Court: You may proceed.

Q. (By Mr. Howard): What is your residence address, Mr. [36] McLaughlin?

A. Box 361, Edgartown, Massachusetts.

Q. And what is your age? A. Sixty-two.

Q. Do you have any licenses as a deck officer issued by the Coast Guard? A. Yes, sir.

Q. And what licenses do you hold at the present time? A. Master's.

Q. How long have you held a master's license?

A. That is the sixth issue.

Q. How many years is that?

A. That will be thirty years.

Q. Thirty? A. Thirty years.

Q. Is that license limited or unlimited as to tonnage and the locations? A. Unlimited, sir.

Q. Unlimited? A. Yes.

Q. Both as to tonnage and location?

A. Yes, sir.

Q. How many years have you been going to sea, Mr. McLaughlin? A. Forty-six years, sir.

Q. Are you presently assigned to any [37] vessel? A. Not at this particular time, no.

Q. You are now—where have you been living most recently?

A. In Massachusetts, sir. Edgartown, Mass.

Q. And you're out here in Seattle for the purpose of this trial? A. Yes, sir.



(Testimony of Ethon C. McLaughlin.)

Q. What type of vessels have you served on most recently under your license as a master, your license from the Coast Guard?

A. Victory, sir.

Q. Victory type ships?

A. Yes, sir, and C-2's.

Q. C-2's? A. Yes, and Liberties.

Q. And Liberty ships. What was your last ship assignment?

A. My last ship assignment was chief officer on the Constitution State.

Q. And what type of vessel is that?

A. A Victory ship, sir.

Q. And is that a turbine driven ship?

A. Yes, sir.

Q. Is that the same type of propulsion that was on the Cotton State? A. Yes, sir.

Q. Who was your last employer, Mr. [38] McLaughlin? A. States Marine, sir.

Q. And when was it that you last served on that vessel, the Constitution State?

A. May the 29th was my last——

Q. May of 1958? A. This year, 1958.

Q. And your position was chief mate?

A. Chief officer, yes, sir.

Q. Did you some time prior to that serve on the Cotton State? A. Yes, sir.

Q. And who operated that vessel?

A. States Marine.

Q. And what type of vessel is that?

A. She's a C-2, sir.

(Testimony of Ethon C. McLaughlin.)

Q. How long did you serve on the Cotton State, Mr. McLaughlin, approximately?

A. I'm not sure what time I left, but it was about four months, I think, four or six months, somewhere around in there.

Q. And in what position?

A. Chief officer, sir.

Q. Who was master of the vessel at the time?

A. Mr. Meier, sir.

Q. Now, Captain, would you describe for us——

The Court: You were there January 10th [39] what year? Were you on that vessel on January 10th?

A. '57, yes, sir, 1957.

The Court: Very well. You may inquire.

Q. (By Mr. Howard): How long had you been serving on the Cotton State before January 10, 1957, if you recall, approximately?

A. I think it was September the year before, something like that.

Q. Will you describe this C-2 type vessel such as the Cotton State? About how long is it?

A. I think she's around 450, 459 or 460 feet, sir, somewhere in there.

Q. In length? A. In length, sir.

Q. What is the beam or breadth of the vessel?

A. The beam is around 60 to 62 feet, somewhere in there, sir.

Q. How many cargo hatches are there on a C-2 vessel such as the Cotton State?

A. Five, sir.

(Testimony of Ethon C. McLaughlin.)

Q. And where are those located with reference to the midship house?

A. One, two and three is forward of the midship house, four and five is aft of the midship house.

Q. Have you made an examination of a plan of a C-2 type [40] vessel such as the Cotton State recently at my request? A. Yes, sir.

Q. And have you determined from that plan, Captain, what the distance would be from the forward end of the midship house to a point at the stern of the vessel? A. Yes, sir.

Q. And what point at the stern of the vessel was used for that calculation?

A. The end of the rudder.

Q. And where is the propeller located with reference to the rudder?

A. Forward of the rudder.

Q. So the calculation you have made from the forward end of the midship house is aft beyond the propeller to the forward end of the rudder?

A. Yes, sir.

Q. And what is the footage that you determined? A. 188 feet, sir.

The Court: What was the name of that place, Grand what in the West Indies?

A. Grand Cayman, sir.

The Court: C-a-y-m-a-n?

A. Yes, sir.

The Court: What was the date you are now speaking of? [41]

(Testimony of Ethon C. McLaughlin.)

A. January the 10th, sir.

The Court: These measurements were made as of January 10th?

A. These measurements, sir?

The Court: Yes.

A. No; they was just recently, sir.

The Court: But at any rate the time of the occurrence of the things of interest to you in making the measurement was on the date January 10th?

A. Yes, sir.

The Court: Of this year?

A. Yes, sir.

The Court: Is that right, 1958?

A. The time that I made the measurement was——

The Court: No; the occurrence of the events that inspired your interest to measure that vessel at that place occurred, did they, on January 10, 1958?

A. Yes, sir—1957.

Q. (By Mr. Howard): Now, Captain, I would like to have you refer to Exhibits 1 and 2——

Mr. Howard: Which I now offer in evidence if they have not already been admitted.

The Court: They have not been. Any objection?

Mr. Biele: No objection.

The Court: Each of them is now admitted. [42] The first one is the logbook, the rough deck logbook, and the next one is the photostat of one page of the bell book, No. 2 that is.

(Testimony of Ethon C. McLaughlin.)

(Libelant's Exhibits Nos. 1 and 2 for identification were admitted in evidence.)

Q. (By Mr. Howard): Do you recognize the document which is before you identified as Exhibit 1?      A. Yes, sir.

Q. And what is that, Captain?

A. That's a logbook.

Q. Does that cover the period of the date of the accident?      A. Yes, sir.

Q. Does your name appear on the page for January 10, 1957?      A. Yes; in the bottom.

Q. Did you make any of the entries on the page itself?      A. No.

Q. What is the reason for your name appearing on the page?

A. Each officer on watch writes up his own watch, and at the end of the day when it's put in the logbook the master and the chief mate signs it, examine it and sign it.

Q. While you're at it, Captain, would you tell us what your duties were generally as chief mate on the Cotton State as of the date on January 10, 1957, when this accident occurred? [43]

A. Well, we left Seattle and was coming into——

Q. No; excuse me, just generally what your duties as chief mate would consist of.

A. Oh. Oh, well, it's to take care of the entire cargo, tie up the ship and see that everything is in operation, is working.



(Testimony of Ethon C. McLaughlin.)

Q. How many other mates are there on the Cotton State?      A. Three other mates.

Q. Do you serve a watch?

A. I do not, sir.

Q. Captain, after the entries have been made in the rough logbook which you have before you as Exhibit 1, are they transcribed into another document?

A. Yes; what we call the smooth log.

Q. Handing you what has been identified as——  
The Clerk: Libelant's 3.

(A smooth deck logbook was marked Libelant's Exhibit No. 3 for identification.)

Q. (By Mr. Howard): ——No. 3——

The Court: That is the smooth deck log?

A. Yes, sir; the smooth deck log.

The Court: Is it or is it not the permanent record of the ship respecting the deck department's activities?

A. Yes, sir. [44]

Q. (By Mr. Howard): And will you state how the entries in the smooth log compare or differ from the entries in the rough log?

A. They should compare exactly, sir.

Q. And who writes up the smooth log?

A. On this particular ship the third mate writes the logbook, sir, the smooth log.

Q. Can you identify that Exhibit 3 as the smooth logbook covering the period of the date in question?      A. Yes, sir.

(Testimony of Ethon C. McLaughlin.)

Mr. Howard: I offer that in evidence, your Honor.

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 3 for identification was admitted in evidence.)

Q. (By Mr. Howard): Captain, as chief mate on the Cotton State, what would be your station, your position or your duty at the time the vessel was approaching a dock to make a landing?

A. Well, we had what we call standby, and we call it fore and aft. The chief officer will take part of the men and go forward and the second mate, if he's on watch, he'll be relieved from the bridge by either the third or four mate and he takes the other half of the men [45] and go aft and stand by for tying the ship up.

Q. And who would be on the bridge?

A. And that's done before we enter the dock.

Q. And who would be on the bridge during the docking?

A. Well, the officer that relieve the second mate. They take turns in relieving him.

Q. Now, do you recall the occasion on the evening of January 10th when the Cotton State, afternoon or evening of January 10 when the Cotton State proceeded from Seattle to Everett, Washington?

A. Yes, sir.

Q. And what station did you take when the vessel was approaching to make a landing at Port

(Testimony of Ethon C. McLaughlin.)

Dock No. 1? A. On the bow, sir.

Q. How many men did you have with you, approximately? A. Seven men, sir.

Q. And what duties were you engaged in at that time? A. To tie the ship up, sir.

Q. And will you describe for us just what you did in tying the ship up on that occasion?

A. Yes, sir. When the ship comes in, comes to the dock far enough ahead, we was ordered to put the line out from the bridge. All orders come from the bridge, and usually we put the spring out first to keep her from going too far, and then to make her fast. We get these [46] lines out and when they're secure enough, when two lines is on the bow and two on the stern, usually you get stand by, finished with engine, and when I get orders forward to make her fast, then we completes the job of making her fast and putting on rat guards and so on.

Q. Now, what did you do on this occasion?

A. On this occasion we tied the ship up, put the rat guards on, and I walked aft.

Q. Incidentally, can you tell us what the draft of the Cotton State was at the stern when the ship arrived at the Port Dock in Everett harbor?

A. Eighteen—

Q. You may refer to the logbook, if it would appear in there.

A. (Referring to Libelant's Exhibit No. 3.) Eighteen six, sir.

Q. That's eighteen feet, six inches?

A. Yes, sir; eighteen feet, six inches.

(Testimony of Ethon C. McLaughlin.)

Q. That's the draft at the stern?

A. That's the draft at the stern.

Q. Now, Captain, do you know what the diameter of the propeller was on the Cotton State?

A. Nineteen feet, six, sir.

The Court: Nineteen feet?

A. Yes, sir.

The Court: That is a pretty good sized propeller, is it not? [47]

A. Yes, sir.

The Court: Is it single or double screw?

A. Single screw, sir.

Q. (By Mr. Howard): With that size of propeller and with the draft at the stern of the vessel which you testified existed at the time the vessel came into the dock at Everett, how much, if any, of the tips of the propeller blades would appear above the surface of the water when the blades were in the vertical position, approximately?

A. The blade is covered 20 feet, six inches or nine inches, I'm not exactly certain of the inches.

The Court: Wait just a moment. Mr. Reporter, will you read his answer?

(The reporter read the last answer.)

The Court: I do not know what he means.

Mr. Howard: Maybe I can clear it up.

The Court: Is the fourth word "called," c-a-l-l-e-d?

A. Covered, I meant.

The Court: I do not understand the word you used.

(Testimony of Ethon C. McLaughlin.)

A. Under water, sir.

The Court: I do not want an explanation of it, sir. You mean it is covered?

A. Yes, sir. [48]

The Court: The blade is covered?

A. By water.

The Court: Is that what the word was? Was the word "covered"?

A. Yes, sir.

The Court: And by "covered," as you explained when the Court interrupted you, it is covered by water, is that what you mean?

A. Yes, sir.

The Court: You may inquire.

Q. (By Mr. Howard): Now, with the draft of the vessel that you testified existed at the stern, what, if any, portion of the tips of the blades would be above the level of the water at that time?

A. Two feet three inches, sir, approximately.

Q. Now, Captain, will you describe for us what, if any, warning signs or devices or lights were carried at the stern of the Cotton State to warn vessels of the propeller?

A. On the port and starboard side it's a five by three board usually painted in black background with red letters four to six inches with the words, "Warning, Propeller, Keep Clear," I think is the exact words.

Q. The size of that board again, please?

A. The words on the board? [49]

Q. No; the size of the board.



(Testimony of Ethon C. McLaughlin.)

A. The size, three by five.

Q. Is that feet?

A. Yes, sir; three by five feet.

The Court: Where is that located?

A. That is fastened on the rail on each side of the ship.

Q. (By Mr. Howard): At what point, Captain, with reference to the stern?

A. Right over the propeller, approximately over the propeller.

Q. Well, referring to the center line of the stern, the extreme stern, where would these boards be with reference to that point?

A. On the outside forward abreast of the propeller—above the propeller.

Q. Yes. Would those be on the railing itself?

A. On the railing itself.

Q. At what deck?           A. On the top deck.

Q. The weather deck?

A. Yes; on the weather deck.

Q. Is there any other kind of a warning device, light or sign?

A. And we have approximately from nine to fourteen feet [50] two by four or two by six painted white and red stripes the full length, and in the center of that it's a globe, cluster light—not a cluster light, a round light with a red globe on it with the bulb inside and the wire extending from that up to the stern of the boat plugged in a receptacle.

Q. All right, now let's go back on that. This is

(Testimony of Ethon C. McLaughlin.)

a board or timber about nine to fourteen feet in length?      A. Yes, sir.

Q. And it's made up of a two by four or a two by six?      A. Two by six, yes.

Q. And that is suspended in what fashion?

A. That is suspended by the end of a rope, by two pieces of rope on each end.

Q. And hung from what point?

A. From a point forward of the propeller to a point aft of the propeller.

Q. On which side of the stern?

A. On both sides of the stern.

Q. And when is that hung in place?

A. That is hung in place at the time they tie up, on every occasion.

Q. You have referred to a light, a red light, and where is that located on the board or with reference to the board?

A. In the middle of the board. [51]

Q. And is that a steady light or a flashing light?

A. A flashing light.

Q. About what power, Captain?

A. Well, it's around usually a 60-watt bulb.

Q. And where is the source of supply of the electricity that illuminates that light?

A. That comes from a receptacle in the stern, right dead aft on the stern.

Q. You say a receptacle. Do you mean an outlet that you plug into?      A. Yes, sir.

Q. Going back now to the propeller warning board containing the legend, "Warning, Propellers,

(Testimony of Ethon C. McLaughlin.)

Keep Clear," is that a permanent fixture or is that a removable fixture on the Cotton State?

A. A removable fixture. We takes it up in tying up and letting go.

Q. And how is that attached to the rail of the ship?

A. That is attached by a line at each end. It extends down about six feet, about four to six feet above water.

Q. Now, Captain, I don't understand. The propeller warning board that you have previously described as being up on the rail of the ship, is that a removable fixture or a permanent fixture?

A. Permanent fixture, sir. [52]

Q. And how is that attached to the rail of the ship?

A. It's made fast at each end in four places on the rail, the top and bottom, the top and bottom rail, both ends.

Q. And is that illuminated in any way?

A. Well, in practice we have one cluster light, whichever side of the ship is docked. In this case the ship was port side to the dock and that would be on the starboard side, one cluster light.

Q. I see. Now, Captain, we're going back to the time when you state that you were on the bow of the vessel and you completed tying up the vessel with lines at the bow of the vessel and you started to walk aft. Where did you go on the vessel then?

A. I left forward and I started to walk aft, and when I got right in the middle there I noticed

(Testimony of Ethon C. McLaughlin.)

a man standing on the poop, that's on the cabin deck, and I was coming aft on the portside. I went up the steps and I went across to meet the man that was standing there.

Q. Excuse me. Where was this man standing, please?

A. Midship of the house, forward end.

Q. That would be at the forward end of the midship house? A. Yes.

Q. And in the mid line of the ship?

A. The mid line of the ship.

Q. Yes. [53]

A. And I went on the portside and walked over towards to him and speaks to him.

Q. Who was this man?

A. I don't know, sir. I didn't ask the man his name.

Q. Was he a member of the ship's crew?

A. No, sir.

Q. Was he representing the ship in any way?

A. No, sir.

Q. Did you have a conversation with him at that time? A. I did, sir.

Q. What did you do thereafter, Captain?

A. Well, he says to me, he says, "I'd like to have a line to tie up the tug." Well, that is also a procedure that we has to furnish line for the tugs, all ships.

The Court: That word I do not get, "thirds" or "tugs"?

A. Tugs, sir.

(Testimony of Ethon C. McLaughlin.)

The Court: Tugs?

A. Yes, sir.

The Court: You may proceed.

Q. (By Mr. Howard): And did you have lines available for the purpose of tying up tugs or barges? A. Yes; we had.

Q. Describe to us where the closest lines were that you had available. [54]

A. They was under the step on the starboard side.

Q. Under the step?

A. Yes; on the main deck. We were then standing upon the cabin deck.

Q. What did you do with respect to this request for barge lines?

A. I told him I had them all ready, and at that time I left the boatswain forward putting on the rat guards, and I just waited and him and I was talking—in fact, we wasn't talking, he was talking to the tug man, and——

Q. Who was talking to the tug?

A. This man that I just described.

Q. All right.

A. I thought he was from the lumber company. So the boatswain come along later on and I asked him to get these lines and also to get a man to stand on the deck for the next line, and in the meantime this gentleman told the tug man, he says, "I want that barge," that he was tied up to, that's the forward barge, "I want that barge at number four and I want the after one at number two."



(Testimony of Ethon C. McLaughlin.)

Q. All right. Now, Captain, you have referred to a tug and barges. Will you tell us what you had observed at this time as to where the tug and barges were?

A. They was at the forward corner of the bridge.

Q. What was there, the tug or the barge? [55]

A. Well, the forward barge was right abreast of the bridge.

Q. I see. And where was the tug then?

A. The tug was on the outside corner.

The Court: Which corner?

A. The starboard corner of the tug.

The Court: On which side——

A. Of the barge.

The Court: With respect to cardinal directions on which side of your vessel were the tug and tow?

A. On the starboard side, sir.

The Court: Was that west or east or north or south?

A. That is looking forward from aft, sir, the right-hand side.

The Court: Yes, sir, but do you know which way the compass directions were as you were docked there, as your *Cotton State* was pulled into the dock? Was this moorage or being alongside of the tug and tow on the westerly or easterly, northerly or southerly side of the vessel?

A. The northerly side.

The Court: Pardon?

A. The northern side.

(Testimony of Ethon C. McLaughlin.)

The Court: The northern side. What place, at what dock was the Cotton State at this time? [56]

A. No. 1 dock in Everett, Washington.

The Court: You may proceed. The Court will——

Mr. Howard: Now, may I have this sheet of paper marked so the witness can use that?

The Court: You may do so. Let it be marked, Mr. Clerk, as Libelant's Exhibit 4.

(A blank sheet of paper was marked Libelant's Exhibit No. 4 for identification.)

Q. (By Mr. Howard): Now, Captain, on that sheet of paper, can you outline for us, please, just the general outline of the Port Dock No. 1 at Everett and the position of the Cotton State alongside the dock? Would you like a ruler or a straight edge of some kind on that?

A. All right, sir.

The Court: A better plan, if this is an illustrative drawing, is to ask him what the fact is and then tell him to illustrate it, unless opposing Counsel has an objection. It may be that this drawing will serve opposing Counsel the same useful purpose as it will the libelant.

Mr. Biele: I have no objection, your Honor.

The Court: Very well. Go right ahead, then.

Q. (By Mr. Howard): I believe you already testified, Mr. McLaughlin, as to the portside landing of the Cotton State at Port Dock No. 1, [57] Everett?

A. Yes, sir.

(Testimony of Ethon C. McLaughlin.)

Q. All right. Will you show the position of your vessel as you described it?      A. Right, sir.

(Witness drawing.)

The Court: You do not have to be too accurate, Captain. Just a rough draft. Will you indicate by words the portside and the starboard side of your Cotton State and the bow and the stern?

A. This is the portside and this is the starboard side.

The Court: Now put the words "bow" and "stern."

A. Yes.

(Witness writing.)

Q. (By Mr. Howard): Captain, would you also show on that the midship house which you have described and mark in the approximate position?

The Court: Just write right in the vessel the relative location as between the stern or prow of the vessel.

(Witness drawing.)

The Court: If you know the numbers of those squares, will you put the numbers in there?

A. Yes, sir.

(Witness writing.) [58]

The Court: What do those squares represent?

A. The hatches, sir.

The Court: Very well, and will you put inside

(Testimony of Ethon C. McLaughlin.)

the space that you have marked off in your way as the house——

A. That's right, sir.

The Court: Write in there what it is, house or bridge or what.

A. Well, we call it the midship house.

The Court: Very well. Now, will you let Counsel see that, and this will terminate our proceedings today.

(The document was handed to Mr. Howard.)

The Court: Let Mr. Biele also see it.

(The document was handed to Mr. Biele.)

The Court: The directions of east and west are not there. I believe he said the bow was to the northward, did he not?

Mr. Howard: Was that his testimony?

Mr. Biele: Yes; the bow was to the north.

The Court: The stern of the ship was to the southward and the bow of the vessel was to the northward, is that what you indicated?

A. No; I think the bow was east and west. I meant the side of the barge was on the north of me. [59] I'm not sure of that because I really don't know the direction of that dock.

The Court: The Court does not either. That is the reason you were asked the question. Do you wish to offer this?

Mr. Howard: Yes, your Honor.

The Court: Is there any objection?

(Testimony of Ethon C. McLaughlin.)

Mr. Biele: No, your Honor.

The Court: Let it be received in evidence.

(Libelant's Exhibit No. 4 for identification was admitted in evidence.)

The Court: I assume you offer it to illustrate the witness' testimony, do you not, not as independent evidence?

Mr. Howard: That's correct, your Honor.

The Court: That is all for today. Those connected with this case are excused until 10:00 o'clock tomorrow morning and you may be excused until that time, Captain.

A. Yes, sir.

The Court: Captain, what languages have you spoken, if any, besides English in your formative years when you were growing into manhood or since you have been a man? Have you used any other language but English?

A. Spanish, sir. [60]

The Court: Spanish?

A. Yes, sir.

The Court: Anything else?

A. Nothing else.

The Court: Thank you. Do you believe that your way of emphasizing syllables and of speaking words is the West Indian edition of the English way of speaking?

A. Yes, sir; what we call potwa. Otherwise——

The Court: That is an influence of French, is



(Testimony of Ethon C. McLaughlin.)

it not, or of something that had its original origin in the French language?

A. Yes. We use the same thing because it's not the real thing.

The Court: Court is now adjourned until tomorrow morning at 10:00 o'clock.

(Thereupon, at 5:00 o'clock p.m., a recess herein was taken until 10:00 o'clock a.m., Wednesday, November 26, 1958.) [61]

November 26, 1958—10:30 o'Clock A.M.

(All parties present as before.)

The Court: You may proceed in the case on trial.

ETHON C. McLAUGHLIN

resumed the stand.

Direct Examination

(Continued)

By Mr. Howard:

Q. Going back now to the description that you gave, Captain, of what was done after you tied up the line to the forward end of the ship, can you point out to us on Exhibit 4 the position on the ship where you met this man who requested barge lines?

A. Yes, sir.

Q. And would you make a mark on that exhibit at that point to illustrate the point where you met the man? Mark it "A."

(Testimony of Ethon C. McLaughlin.)

Q. Now, can you also draw on Exhibit 4 the approximate position of the tug Lea Moe at this time that you are testifying to? [64]

(Witness draws on Ex. 4.)

Q. And would you mark "LM" in that to identify the tug? A. Yes, sir (writing on Ex 4).

Q. Now, did you observe another barge behind or aft of the barge which came in contact with the ship?

A. Yes, sir; I observed a pile of lumber in line with that, it was so high I knew it had to be on a barge, but all I could see was the top of the lumber.

Q. Could you determine from your position at Point C on Exhibit 4 where the stern end or the after end of that tow was with respect to the stern of the vessel? A. No, sir; I could not.

Q. Why not?

A. The lumber was too high.

Q. Too high? A. Yes, sir.

Q. By the way, what was the condition of the light or darkness at that time?

A. Well, it was very dark at that time, but you could see everything around by the lights on the ship.

Q. What was the condition of the visibility?

A. Well, I could see good, sir, from the lights.

Q. But it was dark?

A. But it was dark, yes.

Q. Have you determined what the hour of sunset was on the [65] day this accident occurred?

(Testimony of Ethon C. McLaughlin.)

A. Yes, sir; I did.

Q. And what was the hour of sunset?

A. I got it at 1629.

Q. That would be 4:29 p.m.?           A. Sunset.

Q. And how did you determine that, Captain, from what source?

A. By the Nautical—1957 Nautical Almanac, January 10th.

Q. And was that determined for the Port of Everett, Washington?           A. Yes, sir.

Q. Now, who was with you, if anyone, at the time you were on the gangway platform at Point C?

A. No one was there. The man that asked me for the line, he was at Point B.

Q. He was at Point B?           A. Yes, sir.

Q. What did you observe was done thereafter as far as the position of the tug and barges is concerned?

A. After the two by four had broken, the tug kind of sagged away a little from the ship—I mean the barge kind of come away from the ship a little bit, and then the gentleman at Point B, we'll call it, he was standing there and I went and stood alongside of him, leaned over the rail like this, the two was very close together, [66] and he said to the captain of the tug, he said, "I want that barge up here and this one down here at number four."

Q. In which direction with relation to the bow or stern of the ship?

A. Well, Barge 25 at number five, that's at the aft end of the ship.

(Testimony of Ethon C. McLaughlin.)

Q. Yes.

A. And Barge 15, which was at the after end of this second barge, he wanted that up forward at number two.

Q. Now, Captain, on Exhibit 4, can you draw an outline to represent the second barge that you referred to?

A. Yes, sir (drawing on Ex. 4). Yes, sir.

The Court: For the Court's convenience, will you go back just a moment and state what, if anything, became of that upright two by four which you said the barge man stuck down between the side of the barge and the side of the ship, what became of it?

A. The bottom half that broke dropped in the water.

The Court: That is what I am asking you.

A. Yes, sir.

The Court: What happened to it, if anything happened to it?

A. Yes, sir; one-half dropped in the water. [67]

The Court: I am asking you to state now at this time for the Court's convenience what happened? What did it do?

A. It was in between the ship——

The Court: I understood that.

A. Oh, it protected the ship from the barge from——

The Court: All right, then what happened to it? Did it remain in place as there put?

A. No, sir.

(Testimony of Ethon C. McLaughlin.)

The Court: What happened to it?

A. One half dropped in the water and the other half——

The Court: Why——

A. The bottom half.

The Court: What put it into that condition of having a bottom half and some other kind of a half?

A. The contact between the bow of the barge and the ship, sir.

The Court: Do you wish the Court to understand that you did say or intended to say that the contact squeezed it so that it broke in two, is that what you mean to say or something to that effect?

A. Yes, sir.

The Court: Then what happened after [68] that? What happened to the two parts, if you noticed, the two parts of the two by four?

A. The bottom half dropped down and the other half was in the man's hand and I think he just throwed it on the deck of the barge, sir.

The Court: Then what happened?

A. Then she was——

The Court: She, what is that?

A. The barge.

The Court: All right.

A. The barge——

The Court: The barge did what?

A. The concussion of the barge with the contact with the ship pushed her away again.

The Court: What was it?



(Testimony of Ethon C. McLaughlin.)

A. Pushed the barge away from the ship.

The Court: You may proceed.

Q. (By Mr. Howard): Now, Captain, after this time did the barges which you have described and which are shown on Exhibit 4 move aft or forward along the side of the ship?

A. Not at that particular time. I went back when I seen there was no damage done, I went back and stand alongside of the man that was talking. So he——

The Court: No damage to what? [69]

A. Either the ship or the barge.

Q. (By Mr. Howard): You went back to Point B?

A. Yes, and he spoke to the barge captain—to the tug captain, and described that he wanted this barge forward and the other one aft.

Q. Now, which barge by number did he indicate that he wanted at the forward end of the ship and which barge by number did he want at the aft hatches of the ship?

A. He wanted No. 25 barge at number four hatch at the aft end of the ship and No. 15 barge at the forward end or number two hatch of the ship.

The Court: Who wanted?

A. This man that was standing on the deck with me, sir.

The Court: On the ship's deck?

A. Yes, sir.

(Testimony of Ethon C. McLaughlin.)

Q. (By Mr. Howard): Was he an officer or member of the crew of the ship?

A. No, sir, he was a man from ashore.

Q. Did you yourself have any conversation at that time with the master of the tug or the deck hand from the tug who was on the barge?

A. None whatsoever at any time.

Q. Were there any lines secured between either the tug or either of the barges to the ship at the time this [70] conversation was held?

A. No, sir.

Q. And was the tug in the position that you have shown on Exhibit 4 at the time this conversation was held?      A. Yes, sir.

Q. Now, after that time and after you had returned to Point B that you have testified to, was there any movement of the barges along the side of the ship either forward or aft?      A. Yes, sir.

Q. And in which direction?

Mr. Biele: Your Honor, may I interrupt a minute so we can take a look at that sketch?

The Court: The request is denied. You may see it later. He is not offering it yet. Are you offering it?

Mr. Howard: I offer it now, your Honor.

The Court: Then you may.

Mr. Biele: Thank you.

Mr. Howard: I believe the sketch was admitted yesterday, your Honor.

The Clerk: It was, your Honor.

The Court: It was. Then the Court at this time,

(Testimony of Ethon C. McLaughlin.)

in view of that fact and also because the Court thinks it should be done, asks that it be shown or [71] offered for viewing to and by Mr. Biele.

(Libelant's Exhibit No. 4 was handed to Mr. Biele and Mr. Crutcher.)

The Court: I wish you would for the Court's convenience again say—you probably have already said it very plainly, but I wish to hear you say again, if you did say or can now say, what movement as to the barges or a barge, if any, was requested by the man you said was a man from shore who then was standing on the deck with you.

A. He said—he spoke to the captain on the tug; he say, "I want No. 25 barge aft at number four," I think was the hatch he mentioned; however, the after end of the ship, "and I want No. 15 at the forward end of the ship at number two." The captain of the barge answered and said, "Why?" He answered him and said, "Because on account of the length of the lumber on these particular barges."

The Court: Was it the barge man or the tug captain who asked, "Why?"

A. The Captain of the tug, sir.

The Court: You may proceed.

(Libelant's Exhibit No. 4 was handed to the witness.)

Q. (By Mr. Howard): On Exhibit 4, Captain, will you please [72] mark the trailing barge or the

(Testimony of Ethon C. McLaughlin.)

after barge which you have described as No. 15, would you put a "15" in the point where you have identified that barge?

A. Yes, sir (writing on Ex. 4).

Q. Did you participate in this conversation in any way that has just been related?

A. No, sir.

Q. Did you undertake to direct in any way the position or the hatches to which the barges were to be delivered?

A. No, sir.

Q. Now, what was done, Captain, after you returned to Point A and what was done with the barges by the tug?

A. The tug just swing around the corner, put her bow to the front of the barge and give it a push, and it went back slowly and it became, when we tied the line it was at Point B, the head of the barge.

Q. Now, Captain, when you say the tug pushed the barges back, which direction would that be with respect to the bow or stern of the Cotton State?

A. To the stern of the Cotton State, sir.

Q. Would you estimate, please, how far the tug pushed the barges back?

A. Well, I think between thirty and forty feet, sir, when we finally tie her up.

The Court: Did that happen following [73] this request from the shore man on the deck of the ship or was there any relationship to that man's request?

A. It followed after he requested the barge to reverse.

(Testimony of Ethon C. McLaughlin.)

The Court: Very well.

Q. (By Mr. Howard): Were there any lines between the ship and the barge or the tug at that time? A. No, sir.

Q. Thereafter was there a mooring line secured between the ship and the barge?

A. No mooring line between the ship and the barge, sir—yes, after. Pardon me, sir. After.

Q. All right. Now will you describe, please, where that mooring line was secured on the ship, referring to Exhibit 4?

A. That was secured at B point, sir.

Q. At Point B? A. Yes, sir.

Q. And what was it attached to on the ship at that point? A. On a cleat.

Q. At what deck level?

A. On the officers deck.

Q. Where is that with reference to the main deck? A. One deck above.

Q. Yes, and where is this cleat with respect to the outer [74] side or the rail of the ship?

A. It was between the rail and the inside part, we call it the fishplate, between the railing and the fishplate.

Q. And who secured that line on the ship at that cleat? A. The boatswain, sir.

Q. The boatswain of the Cotton State?

A. Yes, sir.

Q. And how and by whom was that line secured on the barge?



(Testimony of Ethon C. McLaughlin.)

A. By the barge deck hand, and he secured it on the outside forward corner of Barge No. 25.

Q. Was that line slack or was it taut?

A. Well, when it was throwed to him it was slack, so between the boatswain and I we pulled in the slack—no, the boatswain asked him where to make it fast and he says, “There.”

Q. You asked whom?

A. The barge man hollered and asked—no, the boatswain hollered and asked the barge man where he wanted it made fast and he told him, pointed and told him, “There,” and that was at the cleat where we were.

Q. The man on the barge indicated where he wanted the line made fast on the ship?

A. Yes.

Q. And was that where the boatswain did make the line fast?      A. Yes, sir. [75]

Q. And was there anyone else in the vicinity on the ship at that time?

A. Well, just a little aft of me was this same man from ashore. He was standing, well, I’ll say three to six feet away from me, still at the rail.

The Court: Do you know his name?

A. No, sir, I didn’t ask him.

Q. (By Mr. Howard): Now, Captain, on Exhibit 4 by a dotted line or a series of dashes can you indicate where the forward end of the leading barge, No. 25, would come to rest after the barge line had been secured and made taut, the slack taken out of it?

(Testimony of Ethon C. McLaughlin.)

(Witness marks on Ex. 4.)

A. All right, sir.

Q. Captain, at this time on January 10, 1957, did you know what the length of these barges was?

A. No, sir.

Q. Had anyone informed you as to the length of them?

A. No, sir.

Q. Have you at my request recently looked at plans of the ship to determine what the distance would be from this Point B where you have marked it on Exhibit 4 back to the stern of the ship aft of the propeller?

A. Yes, sir.

Q. And what calculation did you make as to the distance in [76] feet?

A. That was 182 to 188 I think it was, sir. 188 feet.

Q. 188 feet?

A. Yes.

Q. Have you also made a calculation as to the distance from the extreme forward end of the mid-ship house back to the same point at the stern aft of the propeller?

A. Yes, sir.

Q. And what is that measurement?

A. That was 218, sir.

Q. Will you tell us, Captain, what happened next after you secured this mooring line to the cleat at Point B on the Cotton State?

A. Well, I was inside the rail, the boatswain outside, so I helped him pull the slack, and I lifted the slack up for him to make it fast and when we made it fast, of course I don't know when I done it but I automatically turned around and looked

(Testimony of Ethon C. McLaughlin.)

aft, and at that moment I saw the barge—the lumber is all I could see, the top of the lumber jam under the counter.

Q. Were there any lights on top of either one of the barges?

A. No, sir, not as I saw. I didn't see no light.

Q. Did you see any lights anywhere, on either Barge 15 or Barge 25, as they came alongside?

A. No, sir, I did not. [77]

Q. Can you describe by marks on Exhibit 4 the position of the barge as you then observed it coming under the stern of the vessel?

A. Yes, sir.

Q. By a series of dotted or dashed lines.

A. All right, sir.

(Witness marks on Ex. 4.)

Q. Captain—— A. Yes, sir.

Q. After the line had been secured between the cleat on the Cotton State and the forward out-board stanchion on the leading barge as you have testified to, will you state whether or not the barges moved either fore or aft alongside the ship thereafter?

A. No, they didn't move after we got the line fast, sir. The barges did not move, they stayed right there.

Q. Now, Captain, what did you do after you made this observation of the lumber on the after barge coming in under the stern counter of the ship?

(Testimony of Ethon C. McLaughlin.)

A. When I saw the barge with the lumber jammed against the stern I turned around and said, "I'll go get my light," and the boatswain said, "My light is over there," but I did not stop, I continued to my room, because I had a good light, and I went to my room, grabbed the light and went right down through the passageway, went right back [78] to the stern.

Q. How long in terms of seconds or minutes did it take you to move from that position at Point B to the stern of the ship by way of your room?

A. Well, I couldn't say exactly, but I don't think it would take more than a minute, sir.

Q. Where did you go on the stern of the ship?

A. I went right at the extreme stern of the ship over the propeller and looked around, and all I could see was the top of the lumber.

Q. Will you describe what you did see as you looked over the rail of the ship?

A. Well, when I looked over it was just the lumber, the top of the lumber that I could see, and of course this red flashing light wire, that was hanging under. I couldn't see where the end of it was or anything, but it just was between the ship and the lumber, and so was the two lines that the board was hanging on, all was just underneath, it go right down and the lumber against it.

Q. You are referring to the propeller warning board?

A. Board, yes, sir.

Q. Striped in two colors with an electric light attached to it that you described in your testimony

(Testimony of Ethon C. McLaughlin.)

yesterday? A. Yes, sir. [79]

Q. As hanging down from the rail of the ship?

A. Yes, sir.

Q. And as I understand, you could see the lines that hung that down over below the deck of the ship?

A. Yes, sir.

Q. On which side, the starboard, the offshore side or the port side?

A. The starboard side, sir.

Q. Did you observe whether the other fixed sign, the propeller warning board sign with the legend on it, was also in place at that time?

A. Yes, sir.

Q. Now, what happened thereafter, Captain? What did you observe?

A. Well, then I walk over to the port side to see if the light there was working, and that was in working condition. Then I just came back to the other side and I waited till the barge pulled—the tug pulled the barge away.

Q. Where did the tug move to to pull the barge out?

A. He moved on just the outside corner of No. 15 barge, and when I got there the one man was standing on that barge throwing him a line, or taking one, I'm not sure.

Q. Were there any lines extended between the trailing, the aftermost barge, and the ship when you moved back to [80] the stern area?

A. No, sir, no line whatsoever.

Q. And as you moved back to the stern area



(Testimony of Ethon C. McLaughlin.)

did you see any lights of any kind on either the leading barge or the trailing barge?

A. No, sir, I did not.

Q. How long would you estimate that took for the tug to get from that position it had been in as described on Exhibit 4 with the symbol "LM" to the point which you described where the tug was pulling the trailing barge out from under the stern of the vessel?

A. Well, I wouldn't say that was any more than about a minute and a half or two minutes, maybe. I'm not sure whether it would take that long.

Q. How many men did you see on the barges at that time when you went to the stern area?

A. One, sir.

Q. And where was he located?

A. He was located on the forward corner of the No. 15 barge.

Q. Would he be on the forward corner of the trailing or aftermost barge?

A. Yes, sir.

Q. Was he on the deck or was he on top of the lumber?

A. On the deck, sir.

Q. Incidentally, how high would you estimate the lumber was [81] stacked on these two barges?

A. Well, I wouldn't—it must have been anyway from ten to fourteen feet, sir.

Q. Was that true on both barges or just on one barge?

A. Well, I think both were the same, approximately the same height.

Q. Will you state whether or not lumber was

(Testimony of Ethon C. McLaughlin.)

stacked or loaded all over the barge or just at one end or one side?

A. No, sir, it started from a point about I should say ten feet from the extreme end, on both ends like that. In other words, they had make much room on each end of the barge.

Q. And out to the sides, how close was it to the sides?

A. Well, I think it was right up against the sides straight up. I'm not sure, sir.

Q. As you went to the stern did you notice whether there were any lines attached between the leading barge and the trailing barge, what might be known as coupling lines?

A. Yes, sir, they was tied together.

Q. And how close together were they?

A. Well, I couldn't say exactly, but I should think anywhere from three to six feet.

Q. Captain, when you first arrived on the stern of the vessel and looked over the rail as you described, were you able to determine whether the barge was actually in [82] contact with either the rudder or the propeller?

A. No, sir, I couldn't.

Q. Why not?

A. Because the lumber was right against the ship and I couldn't—it was impossible to see anything. You couldn't see the side of the barge or anything, sir.

Q. Now, what was done with the barge after the tug came around and started to pull it out?

(Testimony of Ethon C. McLaughlin.)

A. Well, the tug got way on the barge and started to pull it. It relieved it from the side of the ship, and as it moved away enough room for the lumber to move, the first pile, the very top extreme edge, fell down between the ship in the water, and as she came out more and more you could see the barge were listing then, and she keep on listing more and more and more lumber would be dropping as she go along, and the barge took a—towards the forward end of the ship on the beach and beached it there.

Q. Describe what you did as far as checking for damage at the stern of the ship.

A. After she left, at that time the boatswain was back aft there and he automatically went and got a—what we call a stepladder. It's a straight ladder, about twelve to fifteen feet it was. However, he rigged that over the side, lashed it against the rail, the top ring of [83] the rail—

Q. Where, with reference to the stern?

A. Right over the propeller and in the midship where these two lines were for the warning board. It was right in between there, and when he made that fast, why it was all ready, so I went down and looked at the propeller. I cast my eye right on it the first thing because that's what I thought she was against, the rudder.

The Court: The what?

A. The rudder, sir, of the ship.

The Court: You thought what was against the rudder?

(Testimony of Ethon C. McLaughlin.)

A. The barge, if it come in contact. So I got down there and I saw chips of wood on the propeller and one small nick that was out of the water in that position on the propeller.

Q. (By Mr. Howard): That was on one blade?

A. On one blade, yes, and I came up and then——

Q. Excuse me, Captain. Was the propeller turning at that time?      A. No, sir.

Q. By the jacking gear or otherwise?

A. Not at that time when I went down there, sir.

Q. Now, what did you observe at that time as far as the condition of the propeller warning board that had been [84] hung over the side of the ship on the offshore side?

A. When the barge moved out the after line that was holding up this warning pole, the one painted red and white, and the wire that was connected to this watertight—or not watertight but marine type bulb that flashed, those broke. It was caught in the end of the lumber, and when she pull away it broke those two ends.

Q. Were you present and actually saw that happen?

A. I was present at that moment, sir, looking right there.

Q. In other words, you saw the line break on the propeller warning board?      A. Yes, sir.

Q. Was there any other damage to the propeller warning board?

(Testimony of Ethon C. McLaughlin.)

A. No, sir, not that I remember. The other end was hanging in the water then, and the wire that connected, that was broken.

Q. Was it still secured by one end of the lines?

A. Yes, sir.

Q. To the rail of the ship? A. Yes, sir.

Q. And how about the electric light cord that supplied the electricity to the marine type light, flashing red light?

A. Well, I pulled that on deck, pulled that right up on deck and throwed it down, and then I had to keep on [85] moving to——

Q. Why?

A. The sparks from the end of it was jumping all around me, so I jumped out of the way.

Q. What did you do to correct that situation?

A. Well, I went around then and undo the plug and took the plug out of the receptacle.

Q. And where is that receptacle again, please?

A. On the very aft end of the ship, sir, on the extreme end.

Q. Now, while this barge was under the stern of the Cotton State did you ever observe any persons on the lumber on top of the barge E-15?

A. No, sir, I did not.

Q. Or at the aftermost end, the stern end of the barge? A. No, sir.

Q. Will you state, Captain, whether or not you observed any members of the deck department of the Cotton State on the deck of that vessel as you



(Testimony of Ethon C. McLaughlin.)

walked aft by way of your cabin to examine the stern area?

A. Yes, sir. I had ordered the boatswain to get one man to take the stern line for the barge, and——

Q. And what did you observe?

A. And that man was standing on the deck around the number four hatch when I went aft.

Q. All right. Now referring to Exhibit 4, would you put a [86] mark on there and identify it as “E” as the point where you observed this other man from the crew of the Cotton State?

A. Well, this is the approximate position.

Q. Approximately?           A. Yes.

(Witness marks on Ex. 4.)

Q. Would it be correct to say that he was aft of the midship house?

A. Oh, yes, sir, on the main deck.

The Court: At this point we will take a short, very brief recess.

(Short recess.)

The Court: You may proceed.

Q. (By Mr. Howard): Captain, after making this examination of the stern area, the propeller and rudder of the ship, by means of the stepladder which you have described, did you thereafter make a further examination or inspection of the stern area from the dock?           A. Yes, sir.

Q. And when was that with reference to the other inspection?

(Testimony of Ethon C. McLaughlin.)

A. Well, it wasn't so very long. We inspected the propeller and then of course we had to go forward, the captain, the engineer and I, and we go down the gangway and walk aft.

Q. That is the captain, the chief engineer and yourself? [87]      A. Yes, sir.

Q. You went down on the dock?

A. Down on the dock, yes, sir.

Q. And walked aft?      A. Yes, sir.

Q. And what could you see from the end of the dock as far as the condition of the propeller is concerned?

A. Well, at that time the engineer had it moving, so——

The Court: No, just answer the question.

A. We observed the damage in three blades of the propeller, sir.

Q. (By Mr. Howard): And where was the damage in the blades of the propeller?

A. Well, I'm not sure whether it was the driving edge or the aft edge and so on and so forth, but——

Q. Was it towards the tips of the propeller blades?      A. Yes, sir.

Q. Was the propeller turning in the jacking gear at that time?      A. Yes, sir.

Q. If I understand you correctly it had not been turning, it was not turning at the time you made your examination from the stepladder?

A. No, sir.

Q. And therefore you were only able to see the tip of one [88] blade at that time?

(Testimony of Ethon C. McLaughlin.)

A. Yes, sir.

Q. From the stepladder? A. Yes, sir.

Q. But when you got down on the dock the propeller was turning in the jacking gear then?

A. Yes, sir.

Q. Now referring you again, Captain, to Exhibit 4, did you mark on there Point E to identify the other deck hand from the ship who was available aft of the midship house? A. Yes, sir.

Q. And do you know who that man was?

A. Yes, sir.

Q. Who was he?

A. Mr. Fulmer there (indicating).

Q. What position did he hold on the ship?

A. A deck maintenance man, or a utility man.

Q. All right. Now, again referring you to Exhibit 4, can you identify on there by the letter "F" the position at the stern of the vessel where the warning boards and flashing light were in place as you have described them?

(Witness marks on Ex. 4.)

A. Yes, sir.

Q. When you walked aft by way of your cabin, will you state whether you observed whether the barges were still [89] coupled together at that time?

A. Yes, sir.

Q. And there was no line between the ship and the barge after of the midship house?

A. No, sir.

Q. On Exhibit 4, Captain, would you identify by

(Testimony of Ethon C. McLaughlin.)

“15,” the number 15, the position of that barge under the stern of the vessel as you have outlined it by lines?

A. Repeat that question again, sir.

Q. On Exhibit 4 would you please put the identifying mark “15” to show the point where the trailing barge was under the stern of the ship?

A. All right, sir.

(Witness marks on Ex. 4.)

A. Yes, sir.

Mr. Howard: That completes the direct examination, your Honor.

The Court: You may cross-examine.

### Cross-Examination

By Mr. Biele:

Q. Mr. McLaughlin, do you have a pilot's license for Puget Sound? A. No, sir.

Q. Prior to this occasion had you ever been in the port of [90] Everett to load lumber?

A. No, sir.

Q. Prior to this occasion had you ever taken two scows alongside at one time to load lumber?

A. Not lumber scows; small scows.

Q. You were the chief mate on the vessel, were you not? A. Yes, sir.

Q. What generally are the duties of the chief mate?

A. With regards to cargo, sir, or lumber or anything?

(Testimony of Ethon C. McLaughlin.)

Q. With regard to cargo, yes.

A. Well, when we get to the dock we tie up and then I proceeds to my room and await for whoever representing the cargo or the lumber or whatever it may be, and he comes in and presents me with what we call a preloading plan. It's the outlining what cargo is going forward or aft or such things as that, whether it has to be secure or whether it's readily able to go on deck or whatever the case may be. He hands me that, and then——

Q. Do you determine then where the cargo is to go to your satisfaction?

A. Well, to the master's satisfaction. It has to go up for his O.K. on the cargo, sir.

Q. Do you approve it also?

A. Well, I approve it after he do, yes, sir.

Q. Would you load cargo that you didn't think was [91] satisfactorily stowed?

A. If it wasn't satisfactorily stowed?

Q. Yes.

A. No, sir. I'd call it to the attention of the master.

Q. Did you have the responsibility to see that the cargo was taken aboard and stowed?

A. Yes, sir.

Q. Did you have the responsibility to see that this cargo on this occasion was taken aboard and stowed?

A. No, sir.

Q. Was this occasion different than your other occasions?

A. Well, I take the responsibility after it's



(Testimony of Ethon C. McLaughlin.)

raised over the rail, sir. Then it becomes my responsibility, sir, from the ship gear to the hatches.

Q. Is one of your responsibilities the safety of your ship at all times? A. Oh, yes, sir.

Q. Is it also one of your responsibilities to watch out and protect the ships that may be passing in the vicinity of the Cotton State?

A. No, sir.

Q. Do you ignore them? A. Sir?

Q. Do you ignore them?

A. Oh, no, I do not ignore them. If a ship—if a barge [92] under tow or under their own power comes alongside the ship, they calls our attention by blowing a few blasts to know that there's someone there. We're probably paying attention to something else, such as—well, maybe you're down in the hold.

Q. Well, once some scows or a tug approach your ship, do you take it as part of your duty to protect those scows and ships? A. No, sir.

Q. You do not have anything to do with protecting those ships whatsoever?

A. Well, it's the customary rule for the ship to furnish line for barges, and we give them the line and make them fast, wherever they're supposed to be.

Q. If you were to see scows coming alongside your ship in apparent danger, would you consider that part of your mate's responsibility to see that they didn't damage your ship?

A. It depends on whether this barge would be

(Testimony of Ethon C. McLaughlin.)

under tow or whether it would be drifting toward the ship.

Q. Well, if the barge was drifting, would you consider it part of your duty to take affirmative action on the ship to do something about it?

A. All we could do is call the—I could let the other men know that it was coming there or anything like that, but [93] all we could do would be to put a fender there, if one was handy.

Q. Now, you say you could call the other men about that. Would you call the engineers?

A. Yes, we could call the engineer, yes, sir.

Q. Would you call the other mates on the ship?

A. Yes, you could. The one on watch would be the one.

Q. Could you call the captain?

A. Well, there wouldn't be any reason to call him unless something happened.

Q. Now, could you call it to the attention of some ship that was drifting in towards the ship?

A. No, I would call the attention to the ship itself.

Q. You would call it to the attention of the engineers, perhaps?

A. No, sir, to the ship.

Q. To the ship?

A. On watch, whoever is on watch.

Q. That is, those on watch on your ship?

A. It would be the one on watch on my ship. In fact, he would be—as the mate I'm not on deck all the time, particularly in the nighttime. In the day-

(Testimony of Ethon C. McLaughlin.)

time, yes, but it would be the duty of the mate on watch at night to call attention of the approaching vessel that was coming in, particularly if they was under their own [94] power or under power by being towed, you would call attention to them to keep clear automatically.

Q. Now, on this occasion did you call it to the attention of the watch mate on your ship?

A. No, sir. I didn't see the accident. I saw it when she was underneath the counter.

Q. Did you call it to the attention of those on the tug or the scows?

A. No, sir. I didn't see it happen.

Q. Now, as I understand it you were one deck above the main deck? A. Yes, sir.

Q. And how high above the main deck would that be?

A. Well, from six to eight feet, sir. Oh, over six feet anyway. It has to be high enough for a man to walk, say eight to ten feet.

Q. Were you above the top of the lumber on the scows? A. Yes, sir.

Q. How high above the lumber on the scows do you think your eyes were?

A. Well—oh, my eyes. I'm six feet. I'd say ten feet, sir, somewhere around there.

Q. You were at least ten feet above the tops of the lumber scows, the tops of the lumber on the scows? A. Yes. [95]

Q. That would give you a birdseye view of everything that went on, didn't it?

(Testimony of Ethon C. McLaughlin.)

A. No, sir, I could only see the top of these lumber—these two sections of lumber.

Q. You could see the tops? A. Yes, sir.

Q. Now, as the scows came alongside and before they came to that point——

Mr. Biele: If I may see Exhibit 4.

The Court: That will be done.

(Libelant's Exhibit No. 4 was handed to Mr. Biele.)

Q. (By Mr. Biele): As the scows came up and hadn't come alongside the ship yet, did you observe them?

A. Yes. When I got up on the deck sir, talking to that man I observed, I could see the forward end of the No. 25 barge.

Q. Did you see two scows?

A. You could see the two, sir, one behind the other.

Q. Did they appear to be in line?

A. Yes, sir.

Q. Did the tug appear to have them under control?

A. Not at that time. When I first see them she was just sitting on the outside of the outside corner, and then after the man talked to them about moving she shift [96] around and——

Q. That's not responsive to my question.

A. Well, they was not under control, sir.

Q. Well, now, did you have a searchlight on the Cotton State on the starboard side?

(Testimony of Ethon C. McLaughlin.)

A. No, sir.

Q. Nothing on the wing of the bridge?

A. No, sir. I had it in my room.

Q. A searchlight?

A. Oh, a searchlight. I think there's a cargo light there, sir.

Q. Where was that located?

A. That's on the forward corner of the bridge.

Q. Was that illuminated at this time?

A. I'm not absolutely sure, sir, but I think it was.

Q. Were there lights in the rigging?

A. Yes, all the lights on the mast was light, sir.

Q. As a matter of fact there was plenty of illumination that night, wasn't there?

A. Yes, sir.

Q. As a matter of fact there was still some daylight even, wasn't there?

A. No, it wasn't really, sir. It was the light from the lights around the ship that made you see everything.

Q. Well, now, are you sure it wasn't daylight? [97]

A. Yes, sir, I'm sure.

The Court: What time of day do you think it was when those barges with that tugboat towing them came alongside?

A. Around 6:00 o'clock, sir.

The Court: In the evening?

A. Yes, sir, or after.

Q. (By Mr. Biele): Mr. McLaughlin, do you re-



(Testimony of Ethon C. McLaughlin.)

member your discovery deposition being taken in Vancouver, Washington, some time ago?

A. Yes, sir.

Q. And that was aboard the ship, was it not?

A. Yes, sir.

Q. Do you remember being put under oath at that time?      A. Yes, sir.

Q. And do you recall testifying to questions and answers on that occasion?      A. Yes, sir.

Q. Do you remember——

The Clerk: What page are you on?

Mr. Biele: Page 117.

(A copy of the deposition was handed to the Court.)

Q. (By Mr. Biele): Do you recall being asked the following questions and giving the following answers: [98]

“Q. In January what was the condition of the daylight?      A. Oh, it was day still.

“Q. It was still daylight?

“A. Yes. It was cloudy that day. I mean the sun wasn't shining.

“Q. At the time of the accident it was light outside?      A. Oh, yes.

“Q. Or was it dark?

“A. It was light; light enough you could see. It was getting dusk, you know.

“Q. Did you have to have any lights, or were you using any lights for this procedure of pulling these scows alongside?      A. No, sir.”

Do you remember giving those answers in re-

(Testimony of Ethon C. McLaughlin.)

sponse to those questions?      A. Yes, sir.

Q. Now, Mr. McLaughlin, in response to your Counsel's question you indicated that there were two warning boards or two warning systems aboard the Cotton State on this night, did you not?

A. Yes, sir.

Q. One of those you described as a barber [99] pole?      A. Yes, sir.

Q. And that was the one that was hung over the side of the Cotton State?      A. Yes, sir.

Q. You also described one as a warning board with some sort of lettering on it?      A. Yes, sir.

Q. Are you sure that both of those were on the ship at that time?

A. You mean the one with the lettering on it, sir?

Q. Yes.

A. Yes, sir. It's a permanent fixture.

Q. Again do you recall giving your deposition in Vancouver and giving—this is Page 132. Do you remember being asked these questions and giving these answers—

The Court: At what page?

Mr. Biele: 132, your Honor.

Q. (By Mr. Biele reading):

“Q. Are there any other signs on the ship warning of the propeller, or is that barber pole all you have?      A. That is our warning signal.

“Q. There is no sign saying—

“A. That is a red light; no sign.

“Q. —‘Beware of propeller’ or is there [100] any lettering on the barber pole itself?

(Testimony of Ethon C. McLaughlin.)

“A. No, sir; just white and red, white and red.”

Do you remember giving those answers at Vancouver?      A. Yes, sir, I do.

Q. At that time you were aboard the ship, were you not?      A. That's right, sir.

Q. And you described only the barber pole?

A. Yes.

Q. You didn't describe this other warning board?

A. No, I don't think I did. That's permanent there, was the reason, probably.

Q. Now, Mr. McLaughlin, you have described a conversation with some gentleman on the ship.

A. Yes, sir.

Q. Could you describe this gentleman to us?

A. Well, he was quite a big man, and, well, I should say he was around the fifties and he wore a Mackinaw coat. That's all I can tell you.

Q. Did he identify himself to you?

A. No, sir, he didn't.

Q. And did you ask for his identification?

A. No, sir, I did not.

Q. Did he say that he was from the Tow Boat Company?

A. I made my own decision about that. I thought he was [101] from the Lumber Company, sir.

Q. You assumed he was from whom?

A. You know, the man representing the lumber.

Q. Now, who were the stevedores on this occasion?

A. Well, offhand I don't know, but there was no stevedore yet, sir.

(Testimony of Ethon C. McLaughlin.)

Q. Well, who was the supercargo on this occasion?

A. I wouldn't know that offhand either, but he was not there. You mean the State Marine supercargo, sir?

Q. Well, maybe I better ask you, did States Marine have a supercargo on the ship?

A. The next morning, yes, I think.

Q. Were there any other supercargoes on the ship?

A. Well, it was what they call the night man.

Q. The night man for whom?

A. Well, I didn't ask him who he was. I met him later on on the after deck.

Q. And this was after this had happened?

A. Yes, this was after the examination and so on and so forth, and I asked him who he is and he say, "I'm the night man." He say, "I relieved the day man," and that was all the conversation between us.

Q. How long did the night man stay on the ship?

A. Well, I went off watch then, sir. He probably stayed on when the regular watch—you know, if they change [102] the shift at 12:00 o'clock, why he probably went off then.

Q. What time was it that you spoke to this gentleman?

A. Well, I couldn't tell you what time, sir. It was sometime after all of this commotion about the examination and this and that, looking at the propeller and so forth. It was sometime after that.

(Testimony of Ethon C. McLaughlin.)

Q. Did the captain or anyone suggest to you that his identity should be ascertained?

A. No, sir, no one.

Q. Do you know who was the consignee of the cargo of lumber that was involved on this occasion?

A. You mean the receiver of the cargo, sir?

Q. Yes.

A. The Army, I was made to understand, sir.

Q. Is it not a practice for the Army to have their own supercargoes aboard ships when their cargo is loaded?

A. No, sir, it's not—in other ports on the Army base, wherever it is, the Army base, you go to their dock and they have their representative.

Q. Do you mean they have a representative aboard the ship?

A. Not there as I know. I don't know if they had anyone at that particular time, but like in Seattle in the Army place or the Navy place or in 'Frisco, wherever there's an Army installation, they has their representative [103] to come aboard, sir.

Q. You mean somebody from the Army comes aboard the ship?

A. Yes, sir, representing the Army.

Q. When their cargo is to be taken aboard?

A. Yes. On private docks, I mean Army installation docks.

Q. Do they do that whenever cargo is taken aboard?

A. It's customary whenever it is taken aboard at Army docks.



(Testimony of Ethon C. McLaughlin.)

Q. Did you see anybody from the Army on the vessel at this time?

A. No, sir, not as I know. There wasn't no one speak to me or I didn't know there was anyone representing the Army.

Q. Did you see a day man before you saw this night man?

A. I only saw one man, and that's the man I speak to, and he asked me for a line to tie the barge before that.

Q. That was the night man you described?

A. Well, he should have been the day man.

The Court: Ask him, "Was it not?" "Is it not?"

Q. (By Mr. Biele): Was that the night man?

A. No, that wasn't the same man, sir.

Q. Oh, was it the day man that you saw?

A. You could say it was the day man.

Q. Was the day man relieved by a night man?

A. The night man—the man that told me that, "I'm the [104] night man," he relieved the day man.

Q. Well, then this conversation that you had before the scows were tied up was with the day man?

A. It should have been the day man, yes, sir.

Q. And your conversation afterwards when you assumed that he was from the Lumber Company was with the night man?

A. Yes, sir.

Q. That was another gentleman?

A. That was a different man, that's right, sir.

Q. Then is it a fair statement that you have

(Testimony of Ethon C. McLaughlin.)

no idea whatsoever who this gentleman was that requested the lines from you?

A. May I have that question again, sir?

Mr. Biele: Will the reporter read the question?

The Court: That will be done.

(The reporter read the last question.)

A. Yes, sir, I mean who he represent, I really don't know who.

Q. (By Mr. Biele): Mr. McLaughlin, the fact of the matter is, is it not, that you don't know when the warning signs were put out on this occasion?

A. No, sir, not the moment it was put out.

Q. You don't know who put them out?

A. Yes, sir, I do.

Q. Do you know whether they were out when the tug was [105] abreast of the stern of the vessel?

A. No, sir.

Q. Your only observation is that they were out later on?

A. No, sir, when I got back aft there.

Q. When you were back aft? A. Yes, sir.

Q. But whether they had been put out before the tug came alongside or while the tug was alongside you do not know?

A. I do not know the time. I know approximately when they should have been put out.

Q. Mr. McLaughlin, did you give any thought to the fact that the propeller might have been turning over on the Cotton State?

(Testimony of Ethon C. McLaughlin.)

A. No, sir, to tell you the truth I didn't give it a bit of thought. I was concerned with the rudder.

Q. You didn't give it a bit of thought?

A. About the turning of the propeller, because we had just got in there and maneuvering getting to the dock and coming from Seattle I didn't think about the propeller being moving at that time.

Q. Do you know how long the propeller was in contact with the scow?

A. No, sir, I do not know.

Q. When you were back aft after getting your flashlight did you observe the scows moving in any way? [106]

A. No, sir.

The Court: Do you know, and state if you do, was the steamship Cotton State in motion at the time the barge was being moved alongside, or was the Cotton State already tied up stationary to the dock?

A. Yes, sir.

The Court: The latter?

(Witness nods his head.)

The Court: I asked you an alternative question and it probably was not very clear. Were you aware of the moment when the barge contacted whatever was contacted as a part of the ship Cotton State, were you aware of the moment of contact? Yes or no, please, if you understand the question. If you do not understand the question I will——

A. Yes, sir.

The Court: At that moment was the ship tied

(Testimony of Ethon C. McLaughlin.)

up already or was it still in the act of being tied up to the dock?

A. It was already tied up, sir.

The Court: How long had it been tied up, if you know?

A. I really don't know that, sir, the minutes.

The Court: Do you feel you have a positive conviction as to whether or not the Cotton State [107] was still in motion and not yet come to rest as a docked ship?

A. She had come to rest and was securely tied up, sir. No motion, no movement one way or the other.

The Court: What is the fact, if you know it, with reference to the tug and barges being in motion in connection with their coming alongside the ship for unloading purposes and with reference to the becoming stationary and tied up at the dock on the part of the ship? Which came to rest first in their respective movements, if you know?

A. When I got back aft it was at a standstill. I did not see the barge nor the tug approach the ship. I was up forward tying the ship up and when I completed tying the ship up I walked back aft, and when I got on top of the house and meet this gentleman, I then saw the barge and the tug.

The Court: At that moment——

A. At that moment.

The Court: ——state if you know whether the tug and the barges were in motion.

A. No, sir, they was standing still, waiting.

(Testimony of Ethon C. McLaughlin.)

The Court: At that moment——

A. At that moment, sir. [108]

The Court: At that moment had any contact occurred between the E-15 and the stern of the vessel or the propeller of the Cotton State?

A. No, sir.

The Court: Then is it your statement or not your statement that at the time of the contacting of the E-15 with the propeller of the Cotton State both craft, that is the Cotton State on the one hand and the tug and tow on the other, were already stationary, stopped in the water, is that right?

A. I didn't—I don't know the time of the contact with the barge and the stern of the ship.

The Court: You may proceed.

A. The after one, No. 15.

The Court: What the Court wishes to know from you if you observed it finally is, and I take it that you did not in view of what you have said, is whether or not the navigation of the two vessels had already been completed and the two vessels had already come to a stop in the water. That is what I would like to know. If you do not know that, then you should not answer. If you do know that, I should like you to answer.

A. At that moment the tug was pushed further aft at that moment, sir. When I looked, at that moment the tug was not under the boat. She had moved aft. [109]

The Court: I did not ask you where she was. I asked you was the tug and either one of those



(Testimony of Ethon C. McLaughlin.)

barges or either one of them in motion before this contact took place.

A. Yes, sir.

The Court: Do you feel your observation was clearly enough made that you know that fact?

A. Yes, sir, I think so.

The Court: You may inquire.

Q. (By Mr. Biele): Mr. McLaughlin, at the time that this contact was made the line from the tug had been cast off the scow, had it not?

A. Which contact, sir?

Q. The contact with the propeller.

A. When I saw the barge aft and was walking on my way aft to get to the barge——

Q. Yes, the line between the tug and the scow had been taken aboard the tug?

A. The man on the tug was just giving him a line from the barge or taking one at that——

Q. And you had a line from the forward scow to the ship, did you not?

A. The forward end, yes, sir.

Q. You had that line?

A. That one was made fast. [110]

Q. And that line was made fast to which part of the forward scow?

A. The outside corner forward.

Q. And that was the place where the tug had been towing from, was it not?      A. Yes.

Q. So in effect your line had been substituted for the tug's line, had it not?

A. Well, if you want to call it that, sir.

(Testimony of Ethon C. McLaughlin.)

Q. And that was at the time when this thing happened, your line was on the ship, on the scows, and substituted for the tug's line?

A. I don't know what time it happened. I saw the tug after—I mean the barge after she was there. I didn't saw the contact, sir.

Q. Now, did you make any protest or any comment whatsoever when the request was made by the man whom you have described from the shore as to how the scows were to be tied up? A. No, sir.

Q. Did you acquiesce in the way they were tied up? A. What, sir?

Q. Did you agree with the way they were to be tied up?

A. Well, for the first line that was perfectly all right, sir. [111]

Q. You saw nothing the matter with it?

A. Well, the only thing the matter with it, she couldn't be operated from there because she was in the midship section of the ship.

Q. Now, you participated in that, though, did you not?

A. Yes, I helped make fast the line, pulled in the slack.

Q. And you stood right there while it was being done? A. Yes.

Q. With this gentleman alongside of you?

A. He was—yes, aft, of me. The boatswain was with me.

Q. Now, at that time were you able to converse with the man on the tug if you wanted to?

(Testimony of Ethon C. McLaughlin.)

A. Sure, I could holler to him if I wanted to.

Q. Did you see any reason to?

A. No, sir, I did not at that time.

Q. Were you thinking about the danger of propeller damage at that time?

A. No, sir. I didn't see the contact yet.

Q. It hadn't entered your mind?

A. No, it didn't enter my mind. I didn't see the barge underneath the stern or anything.

Q. Had anybody from the engine room told you they were going to start up the propeller at that time?

A. There's no engine room on deck, sir. It would be impossible [112]

Q. Had you been told that the propeller was going to be started up at that time?

A. They never do tell me, sir.

Q. They never tell you?           A. No, sir.

Q. Then you had been——

A. Not when you come in like that.

Q. You hadn't been told that the propeller was going to be started up?

A. No. When the ship is in port loading cargo, when she's prepared to go out, the engineer call to the deck for the man on watch and get his permission to turn the propeller over.

Q. Did you assume that the propeller was going to be turned over?

A. Well, we always—I know it's the regular procedure that they turn it over. That's all I know, sir.

(Testimony of Ethon C. McLaughlin.)

Q. You knew the propeller was going to be turned over?

A. Well, it's the regular procedure. I think it should be.

Q. Did you tell that to this gentleman from the shore?      A. Of course not.

Q. Did you tell that to those on the tug or the scows?

A. I had no contact with them whatsoever, not a word.

Q. You didn't open your mouth to tell them that the propeller was going to be turned over? [113]

A. Not a word one way or the other.

Q. Isn't it a fact that there was fourteen inches of one of those blades missing?

A. One tip, yes, sir, was missing. No. 4 I think it was, I'm not sure.

Q. Yes, and there was fourteen inches of that missing?      A. I'm not sure of that, sir.

Mr. Howard: Now, your Honor, I would like to point out that the damages have been stipulated. Mr. Biele knows very well that we have stipulated, we have conceded that one blade of this propeller was damaged on a prior occasion. The damage had been unrepaired. We are not claiming for any of that damage. We have agreed on the damage to the other three blades which occurred in this accident. I can see no relevancy to damage to the fourth blade. I object to going into this.

The Court: Just state on what theory you seek to ask this question.

(Testimony of Ethon C. McLaughlin.)

Mr. Biele: Your Honor, the fact that fourteen inches of this blade were missing was a rather unusual condition on this ship, and that if they try to hold us responsible for knowledge and that this propeller was exposed and turning and all of that and one of these blades had fourteen inches missing, I think that there was much lacking in what they told us, and I think that [114] this gentleman should have told that to those on the ship, that fourteen inches of this blade was missing, because they contend we should have seen it, we should have looked at it, but the fact of the matter is that one of these blades was half——

The Court: Do not argue the case, just state simply on what theory you seek to ask for this information.

Mr. Biele: Lack of general prudence in not notifying those on the tug of this unusual condition in the propeller area, your Honor.

Mr. Howard: Well, your Honor, Counsel has gone into that. Damage to one of the blades has no bearing on that whatsoever.

The Court: The objection is overruled. For the limited purpose mentioned it may be inquired of.

Q. (By Mr. Biele): Do you have the question in mind, Mr. McLaughlin?

A. The last question, sir?

Q. Yes.           A. No, sir.

Mr. Biele: May we have the last question, your Honor?

The Court: Yes. Read it, Mr. Reporter.



(Testimony of Ethon C. McLaughlin.)

(The reporter read the question as [115] follows: "Q. Yes, and there was fourteen inches of that missing"?)

A. On No. 4 blade, I don't know the exact measurement, sir, but there was the tip missing.

Q. (By Mr. Biele): Did you notify the man from the shore that the tip was missing on No. 4 blade?

A. You mean the one that I think was representing——

Q. Yes.           A. No, sir, I did not.

Q. Did you call that to the attention of those on the scows or the tug?           A. No, sir.

Q. Mr. McLaughlin, you testified that there were two other men on deck besides yourself at this time from the ship, did you not?           A. Yes, sir.

Q. Was that in addition to this man from the shore?           A. He made the fourth man.

Q. He made the fourth man?

A. That's right.

The Court: At this time we will take a recess until 2:00 o'clock.

(Thereupon, at 12:00 o'clock noon a recess herein was taken until 2:00 o'clock p.m.) [116]

November 26, 1958—2:05 o'Clock P.M.

(All parties present as before.)

The Court: Will the witness now resume the stand?

ETHON C. McLAUGHLIN

resumed the stand.

The Court: You may proceed whenever Counsel is ready.

Mr. Biele: Thank you, your Honor.

Cross-Examination

(Continued)

By Mr. Biele:

Q. Mr. McLaughlin, when you went back aft on the ship to observe the scow, is it your testimony that somebody was back there aft at that time on the after deck?

A. On the main deck, sir.

Q. On the main deck? A. Yes.

Q. The after part? A. Yes, sir.

Q. Do you know who he was? A. Yes, sir.

Q. Mr. McLaughlin, again referring to your discovery [117] deposition, at Page 109, Counsel, do you remember being asked these questions and giving these answers at Vancouver:

“Q. Was there anyone on the after deck of the ship that you could observe when you went back aft for the first time?

“A. No, sir; no one whatsoever was there.

“Q. It was completely——

“A. Yes, sir; no one was back there at all.”

Do you remember giving those answers to those questions?

A. Well, I probably did. I just can't remember it.

(Testimony of Ethon C. McLaughlin.)

Q. Mr. McLaughlin, you did, as I understand it, go to get a flashlight in your room?

A. Yes.

Q. Is it also true that the boatswain had a flashlight available?

A. Yes. He said to me, he says, "Take mine."

Q. Was he standing in your vicinity?

A. Yes; he was right in my vicinity over the outside of the railing.

Q. Did he offer you his flashlight?

A. He says, "Take mine."

Q. But you didn't do that?

A. No; I didn't.

Q. When these scows were being tied up by you and the mate, [118] or by you and the boatswain, in what direction were you looking?

A. I was facing forward.

Q. That would put your back to where the scows were?      A. Yes, sir.

Q. And to the propeller?      A. Yes, sir.

Q. So that you couldn't see back aft because your back was turned to it as the scows were being tied up?      A. Yes, sir.

The Court: Did anyone working for the scow or speaking for the interests of the scow ever assert to you that the damage was made by the propeller and that the propeller was started in motion after the tug and tow were brought to rest?

A. No, sir; no one.

The Court: You may inquire.

Q. (By Mr. Biele): During the time that these scows were brought alongside and until the line

(Testimony of Ethon C. McLaughlin.)

was secured by you and the boatswain in substitution for the tug's line, did you make any protest or any objection to the way in which it was being done?      A. No, sir.

Q. You stood mute?      A. Sir? [119]

Q. You stood mute? You didn't say anything?

A. No.

Q. This line that was substituted for the tow-line when tightened as you have described would keep the forward scow in towards the ship, would it not, if it were tightened?      A. Yes.

Q. And if it were slacked off it would allow the scows to drift astern or out from the ship, would it not?      A. Yes; it would have if it were.

Q. Now, did you have anyone stationed back aft as a lookout at the time these scows were brought alongside?

A. No. I didn't see these at the time they were brought alongside.

Q. Did you have anyone stationed back aft——

The Court: Did you hear Counsel?

Mr. Biele: Excuse me, your Honor.

The Court: Mr. Witness, did you hear Counsel's last question?

A. Yes. I didn't think he finished it.

Mr. Biele: I'll rephrase my question, your Honor.

The Court: Very well.

Q. (By Mr. Biele): Mr. McLaughlin, what kind of communication do you have from the bridge to those on watch in [120] the engine room?

(Testimony of Ethon C. McLaughlin.)

A. From the bridge telephone, and also a speaking tube.

Q. From the bridge? A. The bridge.

Q. Do you have a telephone from the stern area of the ship? A. Yes, sir.

Q. In the area of the propeller?

A. Yes; to the bridge.

Q. Were those in working condition on this night? A. Yes, sir; if I remember right.

Q. How long do you think it would have taken you to call the engine room when you saw the scow up against the side of the ship as you have described?

A. It wouldn't be a matter of but a few minutes. A few seconds, rather, not minutes.

Q. You could do it in a few seconds?

A. Yes; something like that. You could call up as soon as you saw it.

Q. Now, as the chief mate, do you have the authority to call up the engine room and tell them to stop the propeller if it's rotating and something is menacing it?

A. Yes; if I saw it, I could do that.

Q. You didn't do that on this occasion?

A. When I got aft the barge was against the hull of the ship, the lumber, and I didn't call up. I didn't think [121] of it.

Q. You didn't think of calling up the engine room?

A. No. I was thinking about the rudder.



(Testimony of Ethon C. McLaughlin.)

Q. Well, as I recall your testimony from before luncheon you indicated that you didn't think of the propeller turning, you thought of the rudder?

A. That's quite true, sir.

Q. Did you ever warn those on the tug or the scows that the rudder might be damaged?

A. No. I didn't see it before she went there. She was already there, sir, when I got aft.

Q. Did you do that when you tied up the scows and substituted your line for the line on the tug?

A. No. The barge wasn't underneath there then. When I got there I put the first lines out on the side.

Q. Did you at any time tell those on the tug that the rudder might be in danger?

A. I didn't speak to anyone on the tug or the barge at no time.

Q. At any time?

A. At any time during that tying up or me going aft.

Q. Mr. McLaughlin, when you went aft, did you leave the boatswain at this line that was substituted for the tug's line?

A. When we were tied up? [122]

Q. Yes.

A. That was the position he was in when I left.

Q. And you left him there? A. Yes.

Q. Did you give him any orders at that time?

A. No, sir.

Q. You left him there to see the line?

(Testimony of Ethon C. McLaughlin.)

A. Well, he was completing making it fast, sir, at that time.

Q. Did you have a full crew aboard the Cotton State on this night? A. Yes, sir.

Q. Mr. McLaughlin, did this unidentified person that you have described ever touch a line that you had led from the ship to the scows?

A. The unidentified man that I speak to afterward that say he was——

Q. Did he ever handle the lines?

A. No, sir. This was a long time after we finished that I spoke to him.

Q. This unidentified man had nothing to do with the placing of the lines, the physical placing of the lines?

A. I didn't see him there at the time. He came later, and this was after everything was over.

Q. You saw him after it was tied up? [123]

A. This man told me he was the night man.

Q. But I'm referring now to the time when you substituted your line for the tug's line. Did he handle a line at that time?

A. No; not at that time, sir.

Q. Well, then, would it be correct that the only persons that handled the line on the ship were you and the boatswain?

A. On the ship, yes, sir.

Q. After the substituted line was led from the ship to the scow, did you observe what the tug did after it took in its line? A. No, sir.

Q. So from the time that the tug's line was

(Testimony of Ethon C. McLaughlin.)

taken aboard the tug until you got back aft you don't know what the tug did?

Mr. Howard: I object to that question because there is no testimony in this case, your Honor, that the tug took in its line, nor is there any testimony in this case that there was a substitution of lines.

The Court: In view of the form of the question the objection is sustained with leave to propound a proper question.

Mr. Biele: May I confer with Mr. Crutcher a moment? [124]

The Court: You may do that.

(Brief pause.)

Mr. Biele: I think that's all, your Honor.

The Court: Anything further?

Mr. Howard: Yes; I have some redirect, your Honor. May the witness have Exhibit 1 before him and Exhibit 4?

(The exhibits were handed to the witness.)

### Redirect Examination

By Mr. Howard:

Q. Captain, what time did the Cotton State complete its docking operation at the Port Dock, Everett, on the evening of January 10th? And you may refer to the log to check the time on that.

A. Finished with engine at 1835, and when that order goes to the bridge we get—make her fast forward.

(Testimony of Ethon C. McLaughlin.)

Q. And were you then on the bow of the ship?

A. Yes, sir.

Q. The foredeck of the ship 1835 hours?

A. Yes, sir.

Q. That being 6:35 p.m.?                      A. Yes, sir.

Q. What time did the tug Lea Moe bring the barges along the starboard side of the ship? And you may refer to the [125] log for that if there is an entry concerning it?                      A. I did not see it.

Mr. Biele: Your Honor, I object to this as not proper redirect.

The Court: Did you not dwell upon the time of day or the incidence of the time of day?

Mr. Biele: Just as to the visibility, your Honor, I think.

The Court: The objection is overruled. The Court might consider striking it if he does not tie this in with the question of visibility.

Q. (By Mr. Howard): Do you have the last question, Mr. McLaughlin?

The Court: It could be read if you do not recall it.

A. Yes, your Honor; I don't recall it.

The Court: Read the last question, Mr. Reporter.

(The reporter read the last question.)

A. Here's "1845, Barge E-15 struck propeller."

The Court: Wait just a minute. He did not ask for that.

A. I know, sir, but I don't—yes, "1840, tug bringing barges of lumber alongside. E-25"—

(Testimony of Ethon C. McLaughlin.)

The Court: In land language what does that mean in time? [126]

A. That means 6:00 o'clock, 6:40, sir.

The Court: 6:40?

A. Yes, sir.

Q. (By Mr. Howard): 6:40 p.m.?

A. P.M., yes.

Q. And what time did the accident happen between the barge E-15 and the propeller? And you may refer to the log. A. 1845, sir.

Q. That would be 6:45 p.m.?

A. 6:45 p.m.

Q. In other words, Captain, at 6:35 p.m. the ship was tied up alongside the dock?

A. Yes, sir.

Q. And according to the log five minutes later the tug brought the two barges alongside the ship?

A. Yes, sir.

Q. And five minutes after that the barge struck the propeller of the ship? A. Yes, sir.

Q. According to the log? A. Yes, sir.

Q. Now, Captain, will you tell us again what your testimony was as to the hour of sunset on January 10th?

A. Well, I said it was daylight at that first testimony, and I will say that I found that I was incorrect at that [127] time, but I was referring to the visibility that I could see then, because I could see the top of the tug away from it and you could see everything around at that time.

Q. Now, Captain, my question was what was the



(Testimony of Ethon C. McLaughlin.)

hour of sunset on January 10, 1957, as you computed it from the Mariner's Almanac?

A. 1629.

Q. That would be 4.29 p.m.?

A. P.M., yes sir.

Q. Or more than two hours before the Cotton State tied up at the dock at Everett?

A. Yes, sir.

Q. Now, Captain, when you left the bow of the ship and walked to this point which you have marked on Exhibit 4 where you met this unidentified man, was the ship stationary at the dock at that time? A. Yes, sir.

Q. Did it move thereafter that evening?

A. No, sir.

Q. In any direction? A. No direction.

Q. To any extent? A. No, sir.

Q. You have testified that on your first observation of the tug and barge, that they were stationary along the [128] starboard side of the ship. Am I correct in that? A. Yes, sir.

Q. Did the tug and barge thereafter move in any direction? A. Yes, sir.

Q. In which direction?

A. First it pushed into the boat, and then after that, back.

Q. And how far back did the tug move the barges?

A. Well, I would say around 30 to 40 feet, sir.

Q. Would that be the distance between Point C and Point B on Exhibit 4? A. Yes, sir.

(Testimony of Ethon C. McLaughlin.)

Q. That's a distance of about 30 to 40 feet?

A. Yes, sir.

Q. Now, Captain, in answer to questions by Mr. Biele you admitted making certain statements at the time your deposition was taken with respect to the type and number of warning boards or devices, warning devices, at the stern of the vessel, referring to Page 132 of the deposition as taken at Vancouver, Washington on March 9, 1957. I would like to read again this question as it was read by Mr. Biele from Page 132.

“Q. —‘Beware of Propeller’ or is there any lettering on the barber pole itself?

“A. No, sir; just white and red, white and red.” [129]

The Court: I do not see that on Page 132.

Mr. Howard: It's about—starting the eighth line from the top, your Honor.

The Court: I see it. I wish Counsel could have some influence on the reporters in communities other than Seattle with the result of their using numbered line paper. It certainly is a great convenience on occasions like this. You may proceed.

Q. (By Mr. Howard): And was that your testimony, Captain?      A. Yes.

Q. Is that a correct statement?

A. That was a correct statement.

The Court: Mr. Reporter, will you read what the witness said just a moment ago regarding the answer to the question.

(Testimony of Ethon C. McLaughlin.)

(The reporter read the last three questions and answers.)

The Court: You may proceed.

Q. (By Mr. Howard): Captain, you were referring at that time to the fact that there was no lettering on the board that was hung over the side of the ship at the stern? A. Yes, sir.

Q. Extending by ropes or lines from the rail of the ship? A. Yes, sir. [130]

Q. By the way, Captain, does the turning of the propeller in the jacking gear or turning gear have any effect on the ship as far as causing it to move forward or aft?

Mr. Biele: Your Honor, I object to that. That wasn't gone into on cross-examination.

The Court: Was or was not?

Mr. Biele: It was not, your Honor.

The Court: You asked him something, did you not, something about a jack motion or something of that sort involving the propeller or the ship as a result of the jack motion of the propeller? Did you not make some inquiry about that, something about the jack motion, as I recall? Is it your assertion now that you do not recall having asked anything about jack motion at all?

Mr. Biele: I don't recall asking him whether it moved the ship or not, your Honor.

The Court: It is not a question of all of the effects of it. Can you name the type of question

(Testimony of Ethon C. McLaughlin.)

that you say you think he asked on cross which inspires this further interrogation?

Mr. Howard: Your Honor, my reason for asking that question is because your Honor asked certain questions about whether the ship was stationary or not after it came alongside the dock, and I'm trying to develop that or amplify that by showing that the ship [131] did not move forward or backward by reason of the operation of the jacking gear, and that was——

The Court: The Court is going to sustain the objection. I do not think Counsel is bound by what the Court did.

Mr. Howard: Well, your Honor, I will recall this witness in direct examination and present the same question.

The Court: Do you mean you ask to do that?

Mr. Howard: I ask to do that, your Honor.

The Court: Any objection?

Mr. Biele: No, your Honor.

The Court: Very well, you may do that.

### Direct Examination

(Continued)

By Mr. Howard:

Q. Now, Captain McLaughlin, would the turning of the propeller in jacking gear or turning gear cause the ship to move forward or backward as it was moored to the dock by the mooring lines?

A. No, sir.

(Testimony of Ethon C. McLaughlin.)

The Court: Would it cause it to move sideways either way, left or right?

A. No, sir.

Q. (By Mr. Howard): This movement of the barges aft some [132] thirty feet by the tug, will you state whether that took place before or after the mooring line was secured between the ship and the barge?

A. Before, sir.

The Court: Was it any part of your duty at that time and place to be interested in tidal currents or any other type of water action where that vessel laid at that dock?

A. Yes, sir, because of the draft of the ship.

The Court: Did you observe whether or not there was any force or action taking effect on that vessel from any water currents or tidal movement or any other sort of force from water action?

A. No, sir, I didn't notice.

The Court: You did not?

A. I did not, sir.

The Court: You may inquire.

### Redirect Examination

(Continued)

By Mr. Howard:

Q. Captain, on cross-examination Mr. Biele asked you about certain questions which were answered by you in your deposition on March 9th appearing at Page 109 of the deposition, specifically the questions which follow. [133]

“Q. Was there anyone on the afterdeck of the



(Testimony of Ethon C. McLaughlin.)

ship that you could observe when you went back aft for the first time?

“A. No, sir, no one whatsoever was there.”

Is that a correct statement?      A. Yes, sir.

Q. Was there anyone on the afterdeck?

A. No, sir.

Q. The testimony which you have given today as to the position of Mr. Fulmer refers to his position where?      A. On the main deck.

Q. On the main deck?

A. By the number four hatch.

Q. Is that shown by the symbol “F” on Exhibit 4?      A. Yes, sir.

Q. Later on the same page the question was asked:

“Q. Was there anyone back there the second time when you got back there?”

“A. No, I can’t remember—not on the stern. I know there was no one at the stern.”

A. That’s right, sir.

Q. (Reading): “A. I was the first one that got back there again, and then the mates and the Captain joined me, and anyone else I can’t think.”

Is that a correct statement? [134]

A. Yes, sir.

Q. And is that your testimony today?

A. Yes, sir.

Q. And was Mr. Fulmer back on the stern at the time you got back there?      A. No, sir.

Mr. Howard: That’s all I have, your Honor.

The Court: Any cross-examination?

(Testimony of Ethon C. McLaughlin.)

The Court: Would it cause it to move sideways either way, left or right?

A. No, sir.

Q. (By Mr. Howard): This movement of the barges aft some [132] thirty feet by the tug, will you state whether that took place before or after the mooring line was secured between the ship and the barge?

A. Before, sir.

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A. Yes, sir, because of the draft of the ship.

The Court: Did you observe whether or not there was any force or action taking effect on that vessel from any water currents or tidal movement or any other sort of force from water action?

A. No, sir, I didn't notice.

The Court: You did not?

A. I did not, sir.

The Court: You may inquire.

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Is that a correct statement? [134]

A. Yes, sir.

Q. And is that your testimony today?

A. Yes, sir.

Q. And was Mr. Fulmer back on the stern at the time you got back there?      A. No, sir.

Mr. Howard: That’s all I have, your Honor.

The Court: Any cross-examination?

(Testimony of Ethon C. McLaughlin.)

Recross-Examination

By Mr. Biele:

Q. Mr. McLaughlin, were you aware that the jacking gear started and the propeller rotated at 1840?

A. No, sir.

Q. Do you know that now?

A. Well, if it's in the book here I know it. I would have to refer to the book, sir.

Q. You didn't know it then?

A. Yes. It's never the procedure to let me know.

Mr. Biele: That's all I have.

The Court: The witness is excused from the stand.

(Witness excused.)

The Court: Call another witness for the libelant. [135]

Mr. Howard: Call Mr. Dusevoir.

The Court: Come forward.

EUGENE DUSEVOIR

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

Q. Will you state your full name and residence address, please?

A. Eugene Dusevoir.

Q. Where do you live?

(Testimony of Eugene Dusevoir.)

The Court: How do you spell the last name?

A. It's spelled D-u-s-e-v-o-i-r.

The Court: You may proceed.

Q. (By Mr. Howard): Where do you live, Mr. Dusevoir?

A. I live at 8402 Southwest 30th Avenue in Portland, Oregon.

Q. Are you married? A. Yes.

Q. What is your age? A. Thirty-five.

Q. How long have you lived at that address in Portland?

A. That particular house eighteen months.

Q. And how long have you lived in Portland?

A. Approximately ten or twelve years. [136]

Q. What is your usual occupation, sir?

A. Well, I've been going to sea until this year past.

Q. Did you ever serve on the Cotton State?

A. Yes, sir.

Q. A C-2 vessel operated by States Marine Line? A. Yes, sir.

Q. And in what capacity did you serve on the Cotton State? A. I was boatswain.

Q. What papers do you hold issued by the United States Coast Guard?

A. Mariners Document No. 186900 issued in San Francisco in 1941.

Q. And for what is it endorsed?

A. Unlimited able seaman.

Q. How long have you been going to sea. Mr. Dusevoir? A. Since 1941.



(Testimony of Eugene Dusevoir.)

Q. How long did you serve on the Cotton State?

A. In excess of a year. I can't tell you exactly, but in excess of a year.

Q. Were you serving as boatswain on the Cotton State on January 10, 1957? A. Yes, sir.

Q. When the vessel was at Everett and involved in an accident by a barge striking the propeller? A. Yes, sir. [137]

Q. When did you leave the employment or when did you stop working on the Cotton State?

A. When the ship was sold to another company.

Q. About when was that?

A. In March or April of that same year in which the accident happened.

Q. That would be March or April, 1957?

A. To the best of my recollection, yes, sir.

Q. What type of work have you been doing since that time?

A. Longshoring in Portland.

Q. And are you employed as a longshoreman now? A. When I can get work, yes, sir.

Q. You're not employed in any way by States Marine Line at this time? A. No, sir.

Q. And have not been since March or April of 1957?

A. No, I correct that. I have been employed by States Marine since March or April, 1957. When that ship was sold I was transferred to another vessel of the company.

(Testimony of Eugene Dusevoir.)

Q. I beg your pardon. That was my error, sir. What other ship did you serve on?

A. On the new Cotton State.

Q. Another ship of a different type by the same name? A. Yes, sir.

Q. And how long did you work on that ship? [138]

A. Until November a year ago.

Q. Until November, 1957? A. Yes, sir.

Q. Have you been employed by States Marine Line since that date? A. No, sir.

Q. Now, what were your duties as boatswain on the Cotton State, a C-2 type vessel?

A. Generally supervisory in regards to the nine men deck department under the direction of the chief officer.

Q. At the time a vessel such as that is coming in to dock what would be your usual station?

A. Up forward on the bow with the chief officer and half of the deck department.

Q. Will you state where you were on the Cotton State on the evening of January 10, 1957, when it was arriving in Everett to dock at the Port Dock?

A. In my normal docking station on the bow.

Q. Prior to that had you made any preparations to handle barges alongside the ship?

A. Prior to that, no. Immediately prior to that, no.

Q. Will you state, please, what the condition was at the time the vessel made its landing at the

(Testimony of Eugene Dusevoir.)

dock at Everett with respect to daylight or darkness?

A. I can't answer other than the fact that I had a flashlight [139] with me, so I would have to make assumptions. I can't answer that from knowledge.

Q. What did you do, Mr. Dusevoir, after the lines were secured from the bow of the vessel to the dock at Everett?

A. I stayed forward after knocking off the rest of the men that were up there with me to check on the rat guards and other odds and ends, lock up places that have to be locked to keep longshoremen out of there and so on, and then before I left there the mate came back or got hold of me somehow and informed me that rather than knocking off that I would have to prepare to land some barges alongside the ship.

Q. And what did you do in preparation for handling the barges alongside the ship?

A. Got lines ready that were used for that purpose.

Q. What type of lines?

A. They're three and a half inch manila.

Q. And where did you put those lines?

A. On the starboard side, but exactly where I can't tell you, sir.

Q. Now, while you were on the forward deck and up to the time that you just now mentioned did you make any observation as to whether there was a tug and barges approaching along the off-shore or starboard side of the [140] ship?

(Testimony of Eugene Dusevoir.)

A. No, sir.

The Court: Whose lines were those that you got out?

A. Your Honor, they belonged to the vessel, the steamship in question.

The Court: Proceed.

Q. (By Mr. Howard): What did you do, Mr. Dusevoir, after you obtained these lines that you referred to?

A. I went back to find another man to assist me, because the chief officer had told me that this work had to be done and it required more than one person.

Q. And did you find another man to assist you?

A. The men had already been knocked off, so I went down below and picked the first one I could find who wasn't changing his clothes to go ashore, and that was a deck maintenance man. I told him to come out on deck and assist me in tying up these barges.

Q. Did he do so?           A. Yes, sir.

Q. And where did he station himself?

A. I sent him back in the after part of the main deck in the area of number four and number five hatch to stand by there.

Q. And where did you go then, sir? [141]

A. I went and took a look to see where the barges were so that I could station myself where the forwardmost barge was.

Q. Did you notice barges when you looked on that occasion?

(Testimony of Eugene Dusevoir.)

A. I can't recall seeing any barges until I handed them a line, sir.

Q. I see. Now, where were you when you handed the barges a line?

A. In regards to the midship house of a C-2, I was standing on the cabin deck just about in the center of it, except that I had stepped out over the rail onto the gangway which was rigged out over the side of the vessel, so I was actually extending out over the side a little bit so that I could see better, in the midship section of the cabin deck on a C-2.

Mr. Howard: Counsel, do you have available for use for illustrative purposes the exhibit which we have stipulated may be admitted in this case, being the capacity plan of the vessel?

Mr. Biele: Yes, I have it, Mr. Howard.

Mr. Howard: May we use that at this time?

Mr. Biele: Are you making it your exhibit?

Mr. Howard: I would like to have this witness use it. I will do so if that is necessary.

(A document was handed to Mr. Howard.) [142]

Mr. Howard: May it be marked, please?

The Clerk: It will be marked Libelant's Exhibit No. 5.

(A C-2 type vessel capacity plan was marked Libelant's Exhibit No. 5 for identification.)



(Testimony of Eugene Dusevoir.)

Mr. Howard: I offer that in evidence, your Honor.

Mr. Biele: Your Honor, I would have no objection to that, but if the witness is going to mark it up I might have some.

The Court: That is not before the Court yet. Do you wish to give Counsel advance notice that you are going to object?

Mr. Biele: I wish to reserve my objection. I wish to object to it at this time—well, I'll let it go in but I'll object to any marking on it, your Honor.

The Court: It is admitted.

(Libelant's Exhibit No. 5 for identification was admitted in evidence.)

The Court: Do not make any marks on the paper unless the Court authorizes you to do so.

The Witness: Yes, sir.

Mr. Howard: May it be placed before the witness, your Honor? [143]

The Court: It may be. I would like someone to state, if he believes he can agreeably to opposing Counsel, what this thing is. Give it a name that reflects the information contained in it.

Mr. Howard: Your Honor, it is identified in the pretrial order as a capacity plan of a C-2 type vessel.

The Court: What is it, a cargo plan or a plan of—

Mr. Howard: Actually, it's a profile plan of the vessel, the Cotton State type.

(Testimony of Eugene Dusevoir.)

The Court: It does not emphasize a cargo plan as distinguished from something else?

Mr. Howard: Well, your Honor, the only reason I used the words "cargo" or "capacity plan" is because that is the wording that appears on the cover of the document.

The Court: It is a profile of a cargo plan; do you think that is reasonably accurate?

Mr. Howard: Profile or capacity plan.

The Court: What capacity? Carrying capacity, cargo capacity?

Mr. Howard: It shows the capacity of the various holds, your Honor.

The Court: Capacity for what purpose, just cubic footage, is that all, without reference to cargo?

Mr. Howard: It is used in determining the capacity for loading and discharge of cargo, stowage of cargo.

The Court: You may proceed.

Q. (By Mr. Howard): Now, Mr. Dusevoir, do you recognize what is before you now as Exhibit 5?

A. Yes, sir.

Q. Can you, without putting any marks on it, point out on that where you referred to as having been standing on the accommodation ladder?

A. Yes, sir.

Q. Will you do so with either your finger or your thumb?

A. My finger is laying here on a spot that says "Cabin Deck."

(Testimony of Eugene Dusevoir.)

Mr. Howard: Now, your Honor, I would like to ask that the witness be permitted to mark that position on this exhibit.

The Court: With what kind of a mark?

Mr. Howard: I beg your pardon?

The Court: With what kind of a mark?

Mr. Howard: A distinctive mark. I suggest a red pencil.

The Court: Do you wish him to put an "X" or a "Y" or a "Z" or a "B"— [145]

Mr. Howard: I would say "A-1" encircled.

The Court: You may do that.

Mr. Biele: Your Honor——

The Court: Pardon——

Mr. Biele: Excuse me. I was going to say I would object to that.

The Court: Why?

Mr. Biele: I think the record is clear enough now.

The Court: The objection is overruled. You may do that, Mr. Witness.

(Witness marks on Exhibit 5.)

Q. (By Mr. Howard): Now, Mr. Dusevoir, what was the position of the barges and of the tug when you saw them at that point?

A. The leadingmost barge was directly below me. The tug and the following barge I don't know, sir.

Q. When you say "the leadingmost barge," what part of the leadingmost barge?

(Testimony of Eugene Dusevoir.)

A. The bow of it.

Q. The forward end?

A. I think a barge is endless, but the end that was facing the same way as the ship was, sir.

The Court: You were standing where with reference to what? You say it was just below you. [146]

A. Your Honor, I was standing on a platform, an extension of a platform sticking out over the edge of the ship, and I was directly above the barge.

The Court: Yes, but whereabouts on the ship was this platform where you were standing or where you were?

A. It's an accommodation ladder that normally went from the deck where I was standing down to the water, but it was pulled up flush with the deck.

The Court: Was it on the outside of the vessel at the forepeak or at the sternpost, or where was it?

A. Well, amidships on the side of the vessel, sir.

The Court: Very well. You may proceed.

Q. (By Mr. Howard): And is that the point which you have marked on Exhibit 5?

A. Yes, sir.

Q. Does that show the deck level also at which you were standing?

A. In a dotted line it shows it, yes, sir.

Q. Now, you say you don't know where the tug was at that time? A. No, sir.

Q. Now, did you observe anybody on either the tug or the barges? [147]

A. Yes. The person I assumed to be the deck hand was on the barge.

(Testimony of Eugene Dusevoir.)

Q. And where was he on the barge?

A. On the bow section, not directly below me but very close in a direct line below me.

Q. Now, did you have any conversation with anyone on the barge or anyone on the tug at that time or thereafter?

A. Yes, sir, the normal three things that transpire whenever this occasion comes up. One is a warning and one is a question and one is a statement.

Q. What did you say first?

A. I said, "Heads up," which is the normal thing when you throw a line down to a person.

Q. And what was said next?

A. Second would be the question, "Where do you want it?" which is always done when you find out where they desire the line to be placed.

Q. And was there any response?

A. Yes, a point by the man on the barge pointing in my direction, and I can see this very well, to a cleat that was over his head but near my feet, and he pointed that he desired the line to be placed right on that cleat.

Q. And that was the deck hand from the tug who was on the barge or someone on the barge?

A. Yes, sir. [148]

Q. Was that anyone from the crew of the Cotton State?

A. Oh, no, sir.

Q. And as I understand, that man pointed or indicated where he wanted you to secure the line.

A. He indicated in some manner to me, yes.



(Testimony of Eugene Dusevoir.)

Q. And what if anything else was said?

A. Well, then the statement after I was finished making the line tight, I would sing out as I normally would, "All fast," which signifies that I had fastened my end of the line.

Q. Now, at that time or thereafter did you notice whether there were any lights being shone, burned, on either one of the barges?

A. I didn't notice any lights, no, sir.

Q. Did you have any conversation at that time or later with anybody on the deck of the tug or in the pilothouse of the tug?

A. No, sir.

Q. Now, what did you do after this man pointed out to you the cleat where he wanted you to tie up the barge mooring line?

A. I made the line fast after having taken the slack out.

Q. Who, if anyone, was present on the deck of the ship in the immediate vicinity of you when you did that?

A. Captain McLaughlin, the chief officer. [149]

Q. The chief officer?

A. Yes, sir.

Q. Did you hear him have any conversation with anyone on the barge or the tug at that time?

A. No, sir.

Q. Was there anyone else present at that moment, at that time?

A. Not to my knowledge.

Q. Now I'll ask you whether or not the point which you have designated as Point 1 on Exhibit 5 also represents the point where you tied up the barge mooring line to the cleat on the Cotton State?

(Testimony of Eugene Dusevoir.)

A. Within two feet of it, yes, sir, within the scope of the circle in which I surrounded my No. 1.

Q. And what did you do after you had done that, secured the line on the cleat, or what happened next?

A. I don't know what happened immediately, but it was very soon after that but after I had climbed back over the rail and come aboard the ship that the mate, not me but the mate, noticed something back aft was amiss; what, I don't know.

Q. Now excuse me. You say "come aboard the ship." You were never off the Cotton State?

A. I was on the gangway over the railing. I was actually suspended over the bay on the ship, yes, sir. [150]

Q. The gangway was suspended from the Cotton State?     A. Yes.

Q. You weren't coming back aboard the ship in the sense that you had been aboard the barge?

A. No, but I climbed over the rail in an unorthodox manner.

Q. Now, you say that someone noticed that something was amiss astern?     A. Yes.

Q. What did you observe on that occasion?

A. Nothing. Barges back aft, that's all I could tell you.

Q. Could you determine from that position where you had been or where you were at what the situation was at the after end of the barges?

A. No.

(Testimony of Eugene Dusevoir.)

Q. Could you see any lights at the after end of the barges?

A. Not on the barges, no, sir.

Q. Was it possible for you to determine whether the barge was extending beyond the stern of the vessel or was forward of the stern, rudder and propeller of the vessel?

A. I do not know.

Q. Now, after this observation was made, what happened next, Mr. Dusevoir?

A. I went down to somewhere along number four hatch where I had stationed the other day man to assist him or see that he was getting along all right and then went back [151] aft with the mate, who had already gone past on the main deck and up on the poop deck, and I went back there with the mate.

Q. Now, where was this man?

A. In the area of number four standing by the rail watching what was going on.

Q. Did you observe at that time whether the barges were in close against the side of the ship, or were they out some distance from the ship?

A. By this time I knew they were back under the stern, but when I got that information I don't know.

Q. Did you observe at that time whether there were any lines extending between the ship and the trailing barge? That would be Barge No. 15.

A. I didn't observe any, no, sir.

Q. Well, if there had been some would you have observed them?

(Testimony of Eugene Dusevoir.)

A. I'm sure I would have known it.

Q. Did you have any conversation with anybody on the barges when you were back aft of the mid-ship house?

A. I don't think so. Not that I recall.

Q. Did you see anybody on the after barge, No. 15, at that time?

A. I can't say. I know that a lot was going on at the moment, but I can't truthfully say I saw anyone there [152] or anywhere else, sir.

Q. Will you state whether or not you observed the situation with respect to the attachment of the one barge to the other barge? Were they still coupled together?

A. I do not know.

Q. Now, what did you observe when you went to the stern area?

A. The fact that the aftermost barge had apparently drifted under the stern, or had been put under there. Somehow it got under the stern of the Cotton State, and that the tugboat was—the man I assumed to be the captain of the tugboat, was yelling and screaming for his deck hand to jump aboard the stern of the tugboat, and they came—which he did. The tugboat came back, and I don't know, but a few seconds later he started to tow that aftermost barge toward the forward part of the Cotton State.

Q. In what manner was he towing it?

A. With a stern line, and I think to one bollard on the—one towing bitt on the aftermost barge.

Q. Was there anybody else on the stern of the

(Testimony of Eugene Dusevoir.)

Cotton State other than the chief mate when you first arrived back there?

A. Yes, several people.

Q. Several people? A. Several. [153]

Q. Do you know who they were? Do you recall who they were?

A. I only have to imagine they were longshoremen. I do not know, sir.

Q. Now, do you know whether or not there were lines available aft of the midship house which could have been used to secure either the one barge or the other barge to the side of the ship?

A. Yes, sir. I had put them there myself.

Q. You put them there? A. Yes, sir.

Q. Did you put them there before you went up to this position No. 1 on the accommodation ladder or platform? A. Yes, sir.

Q. Now, after the tug pulled this barge out from under the stern counter of the Cotton State, what did you do then?

A. I personally got a long straight ladder that I kept back aft which was the storage area on that ship, and I lashed it in such a manner that it was suspended over the side of the vessel in the area of the propeller at the request of the chief mate so that he could go down and inspect it.

Q. Did he do so?

A. After I had jumped on the ladder a couple of times to make sure it was safe, which is common policy and courtesy, and then I got back aboard the



(Testimony of Eugene Dusevoir.)

vessel and the chief officer with his light went down over the side of [154] the vessel on this ladder.

Q. By the way, what if any signs, warning boards or flashing lights were there in the stern area of the Cotton State on the evening this accident occurred?

Mr. Biele: Now, may I object to that unless he specifies as to what time, your Honor?

The Court: I think you should do that.

Q. (By Mr. Howard): As of the time you first arrived on the stern of the Cotton State that you just now described, what signs, warning devices or flashing lights were in place?

A. Well, I know two permanently affixed signs which were affixed to the rail on either side of the quarter of the ship were there, and, of course, the condition of the two barber poles is doubtful in my mind because one of them had been hit by this barge. This I knew.

Q. How do you know that?

A. Because the mate was dancing around with the end of the electric cord in his hand where it had been pulled loose from the barber pole.

Q. Did you thereafter see the damaged barber pole, as you describe it, lifted up to the deck?

A. I fixed it immediately so that it would be suspended in a horizontal position rather than the vertical one that it had been left in after the line had been parted. [155]

Q. Now, where had that barber pole been hung

(Testimony of Eugene Dusevoir.)

with reference to the stern? Was it on the offshore side or the inshore side?

A. There's one on either side, but the particular damaged one was on the offshore side of the ship.

Q. And do you know how it was damaged?

A. Only that the barge had been under there against it, and I assume that the collision between the two did it.

Q. Now, did you observe whether there was a warning board with flashing lights, a barber pole type of warning device with flashing lights on the inboard side or the dock side under the stern?

A. I did not observe it, no, sir.

Q. Do you know whether there was a fixed warning sign with the legend, "Warning, Propeller," or "Keep Clear"?

A. I didn't observe it but I know it was there.

Q. And how many of those were there in the stern area?

A. One on either quarter.

Q. At any time, Mr. Dusevoir, from the time that you first were aware of the presence of the barges alongside the Cotton State until after this accident occurred, did anyone on the tug or the barges ever request that the Cotton State provide mooring lines to secure Barge 15 to the Cotton State?

A. Not to my knowledge; no, sir. [156]

Q. Did you ever hear any such?

A. No, sir.

Q. To your knowledge was there ever any other line secured between the barges and the Cotton

(Testimony of Eugene Dusevoir.)

State other than the one which you described having fastened to the cleat at Point No. 1 on Exhibit 5?      A. Not that I know of.

Q. After you fastened that line to the cleat, would it have been possible for that barge to move back aft because of any slack in the line?

A. Not because of slack in the line, but if the barge had been laying a few feet off the ship when I took the slack out of it, then it would be possible.

Q. Is that a fact? Was it laying a few feet off the ship?      A. I don't know, sir.

Q. How much would it have moved aft?

A. It's a mathematical problem, but it would be about as much as there was slack in the line.

Q. Did you undertake to take all the slack out of the line?      A. Yes, sir; definitely.

Q. All right.

The Court: What was the method of doing that?

A. It's to pull on it, your Honor, to remove all the slack.

The Court: By hand or something else? [157]

A. No, by hand.

Mr. Howard: That's all I have on direct examination.

The Court: You may cross-examine.

(Testimony of Eugene Dusevoir.)

Cross-Examination

By Mr. Biele:

Q. Mr. Dusevoir, after you secured this line, did you remain to observe whether the line stayed tight or not, or did you go back aft?

A. I went back aft, I think.

Q. You left this line unattended then?

A. After I had finished fastening it, yes.

Q. And you don't know what happened to the line thereafter?

A. No; I didn't stay there and watch it.

Q. Now, at the time that you tied up the scow with this line forward had you had any conversation with the engineers?

A. The ship's engineers? No, sir.

Q. Had you been told that the propeller was going to turn over?      A. No, sir.

Q. From where you were standing on the cabin deck of the Cotton State you were looking down on the lumber, were you not? [158]

A. I was looking down on the forward part of the barge ahead of the lumber.

Q. Well, you had a birdseye view of the scow?

A. Yes, sir.

Q. From where you were standing could you see back aft to the stern of the ship, too?

A. Yes.

Q. Now, was there any trouble to the scows before this line that you secured was accomplished?

(Testimony of Eugene Dusevoir.)

A. I don't understand what you mean by trouble, sir.

Q. Well, did you see the scows in any trouble before you finished securing the line?

A. The scows themselves, no.

Q. Then is it a fair statement that at the time you got the line secured the scows were still in good shape?

A. Yes, sir.

Mr. Biele: I think that's all, your Honor.

The Court: Anything further?

### Redirect Examination

By Mr. Howard:

Q. From the position that you described in answer to a question by Mr. Biele at the accommodation ladder looking down on the lumber on the scow was it possible for you to determine where the stern end of the tow was [159] with reference to the stern of the Cotton State?

A. I think it may have been possible but I didn't do it, sir.

Q. Were there any lights on the barge at the stern?

A. On the barge, no, sir.

Mr. Howard: That's all.

The Court: Anything further?

Mr. Biele: May I consult with Mr. Crutcher a moment, your Honor?

The Court: Yes; you may.

(Brief pause.)



Mr. Biele: We have no questions, your Honor.

The Court: You may step down, Mr. Dusevoir.

The Witness: Thank you.

(Witness excused.)

The Court: Call the next witness.

Mr. Howard: Mr. Fulmer.

### CALVIN DON FULMER

called as a witness in behalf of libellant, being first duly sworn, was examined and testified as follows:

The Court: How do you spell your last name?

A. F-u-l-m-e-r. One "l."

### Direct Examination

By Mr. Howard:

Q. And your full name, sir? [160]

A. Calvin Don Fulmer.

Q. And your address?

A. 215 Ridge Road, Moses Lake.

Q. Moses Lake, Washington?

A. Yes, sir.

Q. What is your occupation, Mr. Fulmer?

A. My occupation has been a seaman and a rigger.

Q. And how old are you, sir?

A. I am now fifty years old.

Q. What documents do you hold issued by the United States Coast Guard?

A. I hold an able seaman's unlimited document.

Q. Have you ever served on the Cotton State

(Testimony of Calvin Don Fulmer.)

operated by the States Marine Lines, a C-2 type vessel?

A. Yes, sir.

Q. Were you serving on the Cotton State on January 10, 1957, when that vessel was involved in an accident to its propeller at Everett, Washington?

A. Yes, sir.

Q. And in what capacity were you serving?

A. I was serving as deck maintenance at the time.

The Court: That was on the Cotton State?

A. The Cotton State, yes, sir.

Q. (By Mr. Howard): By the way, Mr. Fulmer, are you employed at the present time? [161]

A. I am unemployed now.

Q. And when did you last serve on the Cotton State or any other vessel owned by States Marine Line?

A. The last time I served on the Cotton State was when she was sold in Galveston, Texas.

Q. You haven't been employed by States Marine Line since March of 1957?

A. Not with the States Marine Line.

Q. Do you expect to accept a position on some other vessel operated by some other company here in the immediate future?

A. I expect to go to work as pump man on a little tanker here.

Q. On a tanker? A. Yes.

Q. Not operated by States Marine Line?

A. No.

Q. Now——

(Testimony of Calvin Don Fulmer.)

The Court: What is the present condition of employment in the merchant seamen's trade?

A. The condition of the merchant seamen's trade?

The Court: Yes.

A. There isn't any.

The Court: There is not any employment, [162] is that what you mean to say?

A. I don't—

The Court: What are the employment conditions in the business or the shipping world as it relates to the employability of merchant seamen?

A. Oh, I understand you, your Honor. You see, I am—

The Court: Is it good or bad?

A. I am in Group 2 with the union because I was rigging and let my union book lapse.

The Court: Are the employment conditions good now so all a fellow has to do is to put his name on the board now or have it put there and he will be sent out the next day?

A. No, sir.

The Court: What is the condition?

A. The condition now, you have to have a full book.

The Court: You may proceed.

Q. (By Mr. Howard): Mr. Fulmer, what was your station on the Cotton State when it was arriving at the dock at Everett, Washington, on the evening of January 10th to make a landing?

A. I was forward when she was coming in to

(Testimony of Calvin Don Fulmer.)

make the landing, tying up, with the [163] boatswain.

Q. You were in the crew with the chief mate at the bow of the vessel? A. Yes, sir.

Q. Incidentally, what was the condition of the visibility at that time?

A. The visibility was, I'd say, about—it was dim.

Q. It was what?

A. When we were tying up it was very dim and it was getting dark and it was dark when we finished. It was so dark we couldn't see.

Q. Now, after you had tied up the lines at the bow of the vessel, did you have any other assignment?

A. After we tied up the bow—after I had finished up there, the only assignment I had was the boatswain says, "We'll tie up these barges. You assist me."

Q. And where did you go to assume the position to do that job?

A. Where the boatswain had stationed me.

Q. And where was that, please?

A. Just aft, just the break of the well deck.

The Court: The well deck is where from the stern?

A. Oh, the well deck is midships. I call it the well deck.

Mr. Howard: May the witness have Exhibit 5, [164] please?

(Testimony of Calvin Don Fulmer.)

(Libelant's Exhibit No. 5 was handed to the witness.)

Q. (By Mr. Howard): Can you point out on Exhibit 5 the position that you refer to where you assumed your position to assist in tying up the barges? I suggest that when you locate that position that you mark it with a "2" with a circle around it.

A. It was right in here (marking on Ex. 5).

The Court: If he could put the initial of his last name, I think that would be a good idea.

Mr. Howard: Very well.

The Court: Because another witness has put marks on the same exhibit.

Mr. Howard: May Counsel see this exhibit?

The Court: Yes. Let opposing Counsel see it likewise.

(Brief pause.)

Q. (By Mr. Howard): The position that you have marked, Mr. Fulmer, might otherwise be described as near the forward end of number four hatch?

A. It could be described as the forward end of number four hatch or between number four hatch and the entrance to the passageway.

Q. All right. Now, while you were in that position, did you [165] observe any tug and barges approaching the offshore side of the vessel?

A. Certainly I observed them. That's my job.



(Testimony of Calvin Don Fulmer.)

Q. Where were the tug and barges when you first observed them?

A. When I first observed them, one of them had already got the line out, and I held this three and a half inch hawser in my hand to pass the line. That's what I'm there for, and——

Q. Was there anyone on the barges in the vicinity of where you were standing?

A. Not in the vicinity of where I was standing, no, sir.

Q. Did you ever pass that line or were you ever requested to pass the line to anyone on the barges?

A. I never passed it. I wasn't requested to pass it, but I wanted to pass it. Don't misunderstand me. I could have passed it, but it wouldn't have helped.

Q. Why not?

A. Because there was no one there to ask for it or to receive it and it wouldn't have helped anyway.

Q. Now, you have referred to one line having already been attached between the barge and the ship. Where was that line that you referred to?

A. That is the line that the boatswain had secured.

Q. All right. Referring to Exhibit 5, will you notice the [166] mark on that, and I'll ask you whether or not that represents the position where the boatswain secured the line to the leading barge?

The Court: Tell him what the mark is.

A. I see it.

(Testimony of Calvin Don Fulmer.)

Q. (By Mr. Howard): It's the one with the circle around it, Mr. Fulmer.

A. I understand it. I understand the ships. That is as approximate as I could put it, and I was there.

Q. Now, after you noticed that that line had been secured between the Cotton State and the forward end of the leading barge, will you state whether or not there was any movement of either of the barges toward the aft or stern part of the Cotton State?

A. After this line—may I answer this in a sailor's way? After this line had been secured there was no movement and no slack in that line, because when a sailor secures a line, it's secure. There was no slack in it.

Q. Then the barges did not move aft after you observed that line secured by the boatswain to the cleat on the Cotton State?

A. That's exactly right.

Q. Did you ever receive any request from anyone on the tug or the barges to pass a line over to the barges to secure either the E-15, the trailing barge, or the E-25, [167] the forward barge?

A. I can assure you that I did not.

Q. Did you ever see any lights burning at any point on either one of the barges there?

A. There was no lights on the barges.

Q. If there had been lights, would you have seen them?

A. Well, certainly I would have seen them.

Q. Did you observe any movement of the deck

(Testimony of Calvin Don Fulmer.)

hand or anyone on the barge while you were in your position that you have marked on Exhibit 5 there? Did anyone come across the barge in any direction?

A. This sailor on the barge was by himself.

Q. Yes.

A. He had a big job, and that's the only gentleman I saw.

Q. And where was he on the barge?

A. He was there to receive the line and make it fast, and after that he tried to do his job. That's all I know.

Q. Did he come aft towards the stern of the tow, towards the aft end of the tow?

A. Yes, sir; he come aft.

Q. How were the two barges connected together, Mr. Fulmer?

A. They were tied, what a sailor would call block and block. Block and block means less than three feet.

Q. They were less than three feet apart?

The Court: You say that term was block [168] what?

A. Block and block.

The Court: Oh, block and block.

Q. (By Mr. Howard): Less than three feet apart, is that right? A. They were snug up.

Q. Did the trailing barge or the aftermost barge, was that in close alongside the offshore side of the Cotton State when you first observed it?

A. The barge that was the trailing barge, as

(Testimony of Calvin Don Fulmer.)

you call it, was not in close, but she—after the boatswain had made this fast she began to come in, and the tug went to get it and move it. Do you understand what I mean?

Q. Yes, sir.

A. Had he been able to go ahead and get ahold of that, it wouldn't have got under the stern.

Q. Did you hear any conversation between the man on the barge and the master or the operator of the tug?

A. The man that was operating the tug and the man on the barge were talking back and forth, like sailors would do.

Q. What was said that you recall?

A. That I cannot say. I don't—

The Court: Did you see any fender or fenders of any description between the barge and the ship's side?

A. The only fender I saw was what we'd call a four-by-four or a two-by-four, a four-by-four, it's a [169] small fender, and it parted.

The Court: How was that being used? Was it being held in somebody's hand or under someone's control at the moment, or was it something that had been thrown in the water before this operation began?

A. Judge, your Honor, it wasn't thrown in the water. It's like a fender on the ship, it's put there and it's made fast.

The Court: Who put it there, if you know?

A. I do not know.

(Testimony of Calvin Don Fulmer.)

The Court: On what thing was it fastened, this fender? Was it fastened to something?

A. Judge, your Honor, it is a fender and it can't be hanging there. Yes, it is fastened to something.

The Court: It either has to be afloat or it has to be tied to something.

A. Certainly.

The Court: How, then, was it engaged?

A. I don't know how it was engaged. I didn't put it over. Had I put the fender over I could——

The Court: Did it appear to be tied to the ship or part of the ship's gear or something put out by the ship, or did it appear to be something belonging to the barge or to someone on the barge or in someone's hands who was operating from the barge? How did it [170] happen to appear to you? What was its surrounding rigging or use to which it was being put at the time?

A. That's a very difficult question for a sailor to answer, because to me it's a fender and it's hanging over there.

The Court: I do not know what it was hanging over. That is what I am trying to find out.

A. Yes.

Q. (By Mr. Howard): Was it hanging over from some point on the barge?

A. I don't—that I cannot answer, but the fender is there. I can see the fender is there. It's like——

The Court: Was it a two-by-four?

A. A four by four, I'd call it a four-by-four.



(Testimony of Calvin Don Fulmer.)

The Court: Would it not be something like a matchstick?

A. A four-by-four is a four-inch board. It's square.

The Court: This was a four-by-four?

A. It looked to me, it appeared to be a four-by-four. It might have been a two-by-four. You cannot judge those things, your Honor.

The Court: But was not the weight of those laden barges and the weight of the ship if they should [171] be brought into contact such that a four-by-four or two-by-four would be mashed like a matchstick between them, would it not?

A. Not with just a barge. It would be crushed and break.

The Court: You may inquire.

Q. (By Mr. Howard): Mr. Fulmer, getting back to this man who was on the barge, he was not a member of the crew of the Cotton State, was he?

A. The man on the barge, definitely not.

Q. Did you hear that man on the barge at any time make any report to the master of the tug as to the position of the trailing barge No. 15 near or under the stern of the Cotton State?

Mr. Biele: I object to that, your Honor, as leading.

The Court: Please read the question.

(The reporter read the last question.)

The Court: Overruled.

Q. (By Mr. Howard): Can you answer that

(Testimony of Calvin Don Fulmer.)

question, sir?           A. I will answer it.

The Court: It will be read again if you did not quite catch it.

Q. (By Mr. Howard): Would you like it read again?

A. Read it once more. [172]

The Court: Read the question again.

(The reporter re-read the question.)

Mr. Biele: Your Honor, I think he has testified to that already. He said he didn't hear him, about two or three questions back.

Mr. Howard: I don't believe that question or anything near it was asked, your Honor.

The Court: If it was stated before the Court did not quite get it and the Court overrules the objection to accommodate the Court, not because Counsel is not entitled to the objection. It is because the Court would be inconvenienced by hearing the answer to this particular question in this connection.

Mr. Biele: All right, your Honor.

A. When the barge is under—after this excitement is all starting, then I heard a conversation. I didn't know what it was, I didn't listen to what it was, because there was nothing I could do, your Honor, to avoid that accident. I would have put a ladder over there to push it away.

The Court: That is sufficient, Mr. Fulmer.

Q. (By Mr. Howard): Did anybody on the Cotton State participate in that conversation?

(Testimony of Calvin Don Fulmer.)

A. No one on the Cotton State.

Q. Mr. Fulmer, do you know whether at that time the flashing [173] light and the propeller warning board were in place at the stern of the Cotton State on the offshore side?

A. Yes, sir, I'm definitely positive because I was in a position to see that they were.

Q. After the accident occurred did you go back to the stern area?

A. I went back to the stern area with the mate. I am there. If I could have helped those men on that tugboat to keep that out of there——

The Court: No, do not make volunteer suggestions like that. Just answer the questions.

A. Yes, your Honor.

Q. (By Mr. Howard): Mr. Fulmer, just please listen closely to the question now. What did you observe with respect to the flashing light and propeller warning board when you went to the stern area from your position that you have marked on there?

A. I could see the lights were lit.

Q. Was there any damage to the propeller warning board that you observed when you went back there?

A. Oh, when I went aft, certainly there was damage to it.

Q. That's what I mean.

A. It was smashed up, just like the Judge, your Honor, asked me. It was hanging by one line and the line was parted.

(Testimony of Calvin Don Fulmer.)

Q. Was the electric light cord damaged in any way? [174]

A. It was broken.

Q. How about the propeller warning light on the other side of the stern, do you know whether that was burning or not?

A. That I did not notice.

Q. You didn't notice. What did the tug do with respect to the barge when you went back aft?

A. The tug was doing all in his power to get it out of there.

Q. Did the tug move the barge out?

A. He got it, but it was after it had hit.

Q. Now, Mr. Fulmer, was that barge at any time secured by a line to the Cotton State?

A. No, sir.

Mr. Howard: That's all.

The Court: Cross-examine.

#### Cross-Examination

By Mr. Biele:

Q. Mr. Fulmer, the boatswain was one deck above you, was he not? A. Yes, sir.

Q. So that you couldn't observe him as he performed his work, could you?

A. He was one deck above me but he was on—you see, the gangway isn't down, it is lowered, ready to be lowered, you understand what I mean, by the ship. So you can [175] step out on that gangway and you're—I could observe him.

(Testimony of Calvin Don Fuher.)

Q. Well, you saw him scure the line to the forward scow?

The Court: "Did you no?"

Q. (By Mr. Biele): Didn't you?

A. I did see him secure the line, yes, sir.

Q. Now, when that was done was the forward scow and the after scow blok to block as you have described them? A. Yes.

Q. And the line that the boatswain had secured in effect was holding the ater scow, the two scows were tied together, were thy not? A. Yes.

Q. And there was a line to the forward scow, was there not?

A. The forward scow is made fast.

Q. And through the forward scow the after scow was tied up?

A. They're tied together, the two scows are together. There is no line in the ship between them.

Q. No, but there was line from the ship to the forward scow that was scured? A. Yes.

Q. And there were two lines between the two scows that secured the brward scow and the after scow, and those were block to block or about less than three feet, were thy not? [176]

A. (Witness nods his head.)

Q. All right. When you saw this after scow go under or go against the side of the ship you indicated you would have one anything to have helped, did you not? Did you lo anything?

Q. I didn't only irlicate it, I would have.

Q. Well, did you do anything?



(Testimony of Calvin Don Fulmer.)

A. How am I going to get on the scow? I'm a sailor on deck. How am I going to get on that scow to do anything? I cannot do that. I can only take orders from them. I'll give them anything they'd have hollered for.

Q. Did you know at that time that the propeller was turning?

A. I did not know the propeller was turning.

Q. Would you have called the engine room if you had known the propeller was turning?

A. I would have notified Mr. McLaughlin.

Q. You didn't do that, however?

A. I didn't know it was turning.

The Court: Where you were standing at the forward side of number four hatch, was that forward of the house, the ship's house?

A. No, the ship's house is forward of that. I'm aft of the ship's house.

The Court: How many hatches are forward of the ship's house, if you recall? Are there two or more? [177]

A. There is three.

The Court: Three, and the fourth hatch is the first aft of the house, is that right?

A. Yes. There's two aft, four and five.

The Court: You may inquire.

Q. (By Mr. Biele): How far was it, Mr. Fulmer, from where you were to where the propeller was on the ship?

A. That I cannot measure without using a slide rule.

Q. Well, from where you were——

(Testimony of Calvin Don Fulmer.)

Q. Well, you saw him secure the line to the forward scow?

The Court: "Did you not?"

Q. (By Mr. Biele): Didn't you?

A. I did see him secure the line, yes, sir.

Q. Now, when that was done was the forward scow and the after scow block to block as you have described them? A. Yes.

Q. And the line that the boatswain had secured in effect was holding the after scow, the two scows were tied together, were they not? A. Yes.

Q. And there was a line to the forward scow, was there not?

A. The forward scow is made fast.

Q. And through the forward scow the after scow was tied up?

A. They're tied together, the two scows are together. There is no line on the ship between them.

Q. No, but there was a line from the ship to the forward scow that was secured? A. Yes.

Q. And there were two lines between the two scows that secured the forward scow and the after scow, and those were block to block or about less than three feet, were they not? [176]

A. (Witness nods his head.)

Q. All right. When you saw this after scow go under or go against the side of the ship you indicated you would have done anything to have helped, did you not? Did you do anything?

Q. I didn't only indicate it, I would have.

Q. Well, did you do anything?

(Testimony of Calvin Don Fulmer.)

A. How am I going to get on the scow? I'm a sailor on deck. How am I going to get on that scow to do anything? I cannot do that. I can only take orders from them. I'll give them anything they'd have hollered for.

Q. Did you know at that time that the propeller was turning?

A. I did not know the propeller was turning.

Q. Would you have called the engine room if you had known the propeller was turning?

A. I would have notified Mr. McLaughlin.

Q. You didn't do that, however?

A. I didn't know it was turning.

The Court: Where you were standing at the forward side of number four hatch, was that forward of the house, the ship's house?

A. No, the ship's house is forward of that. I'm aft of the ship's house.

The Court: How many hatches are forward of the ship's house, if you recall? Are there two or more? [177]

A. There is three.

The Court: Three, and the fourth hatch is the first aft of the house, is that right?

A. Yes. There's two aft, four and five.

The Court: You may inquire.

Q. (By Mr. Biele): How far was it, Mr. Fulmer, from where you were to where the propeller was on the ship?

A. That I cannot measure without using a slide rule.

Q. Well, from where you were——

(Testimony of Calvin Don Fulmer.)

A. And reading this blueprint.

Q. From where you were could you see back towards the propeller area?

A. I could see back—Judge, your Honor—

The Court: That is not required, Mr. Fulmer.

A. O.K.

The Court: Just answer the question, and when you have finished that it is his responsibility to ask another.

A. Yes, I can see.

Mr. Biele: May I confer with Mr. Crutcher a minute, your Honor?

The Court: Yes, you may.

(Brief pause.)

Mr. Biele: I think that's all, your Honor.

The Court: You may step down. [178]

Mr. Howard: I have some redirect, your Honor, just very brief.

The Court: As briefly as possible, Mr. Howard.

### Redirect Examination

By Mr. Howard:

Q. When the tug moved the after scow out, how was it separated from the forward scow?

A. When it pulled it out?

Q. Yes.

A. I don't understand, how it was separated. It was separated.

Q. You have testified, Mr. Fulmer, that they were coupled together with short lines.

(Testimony of Calvin Don Fulmer.)

A. Yes.

Q. Did someone cast those lines loose?

A. The deck hand must have cast them loose and let——

Q. The man on the barge cast them loose?

A. He must have.

Q. The after barge was moved out by itself, it was not still attached to the forward barge?

A. The after barge was not moved out by itself.

Q. Pulled out by itself?

A. Yes, the tugboat got ahold of it.

Q. The tugboat pulled that barge out by [179] itself?      A. Yes.

Q. It was no longer attached to the forward barge?

A. It was cast loose and they pulled it out.

Q. And that was done by the man on the barge, is that right?

A. That's right. It couldn't have been done by anyone else.

Mr. Howard: That's all, your Honor.

Mr. Biele: May I have one——

The Court: Yes, you may.

### Recross-Examination

By Mr. Biele:

Q. Mr. Fulmer, this casting off that you have described of the after barge was accomplished or done after the damage to the propeller was done, was it not?

A. After the damage was done, yes.



(Testimony of Calvin Don Fulmer.)

Q. But before the damage was done the two scows were coupled together, were they not?

A. That's right, sir.

Mr. Biele: That's all, your Honor.

The Court: Mr. Fulmer, which side of the Mississippi did you grow up on? You were there for quite awhile before you started out going to sea, were you not?

A. Yes, sir. I've been going to sea since 1926, your Honor. [180]

The Court: Where was your early stamping grounds?

A. That's Alabama.

The Court: You may step aside.

(Witness excused.)

The Court: Court is now at recess for ten minutes.

(Short recess.) [181]

Wednesday, November 26, 1958—After  
Midafternoon Recess

(All parties present as before.)

The Court: You may proceed.

Mr. Howard: I would like to read a deposition, your Honor.

The Court: You may do that.

Mr. Howard: I would like to offer in evidence at this time the testimony of Otto K. Boltz by deposition taken at New York.

The Court: The Court will reserve ruling until it is finished.

Mr. Howard: I beg your pardon?

The Court: The Court will reserve ruling until the deposition is read in case there might be some parts of it ruled out.

Mr. Howard: Very well.

(Thereupon, the deposition of Otto K. Boltz was read as follows:)

### DEPOSITION OF OTTO K. BOLTZ

“Q. Mr. Boltz, by whom are you employed?

“A. States Marine Corporation.

“Q. In what capacity?

“A. Chief engineer.

“Q. How long have you been in that employment? A. Close to 11 years. [182]

“Q. Are you presently employed by States Marine Corporation? A. Yes, sir.

“Q. On what vessel?

“A. SS Green Mountain State.

“Q. In what capacity?

“A. Chief engineer.

“Q. Is that vessel now in the course of a voyage?

“A. No, it is laying in Port Newark.

“Q. When do you expect to depart from Port Newark?

“A. We have to shift to Brooklyn about a couple of days, I guess.

“Q. And then you are proceeding to sea?

“A. Then to Camden, yes.

(Deposition of Otto K. Boltz.)

“Q. Well, the vessel is now in the course of a voyage?      A. Discharging cargo.

“Q. Where is your home?

“A. 2974 Burdick Drive, Oakland, California.

“Q. On January 10, 1957, by whom were you employed?

“A. States Marine Corporation of New York.

“Q. On what vessel?

“A. SS Cotton State.

“Q. In what capacity?

“A. Chief engineer.

“Q. Previously to January 10, 1957, how long had you been sailing on that vessel as her chief engineer? [183]

“A. It was close to four months, going on four months.

“Q. And you have continued in her service after January 10, 1957?      A. That is correct.

“Q. For about how long?

“A. Until we turned the ship over to the Bloomfield Steamship Company in April.

“Q. You continued on her as chief engineer until April, 1957?

“A. Yes, we changed it for another ship.

“Q. What type vessel is the Cotton State as to class?      A. A C-2 type.

“Q. Is she powered by steam?      A. Yes, sir.

“Q. And what mode of propulsion?

“A. She has a 6000 horsepower cross-compound steam turbine.

“Q. With H P and L P units?

(Deposition of Otto K. Boltz.)

“A. Yes, right.

“Q. What manufacture?

“A. General Electric.

“Q. Driving how many propellers?

“A. One.

“Q. What is the diameter of her propeller?

“A. 19 feet 6 inches.

“Q. On the morning of January 10, 1957, was the Cotton State located at Pier 58, Seattle, Washington? [184]      A. Yes.

“Q. Did she depart from that port on that day for the port of Everett, Washington?

“A. Yes, sir.

“Q. Previously to the departure from Seattle on January 10th, what, if any, inspections were personally made by you of the stern area propeller rudder of the Cotton State?

“A. The captain, the mate and myself, we always do the propeller and hull inspection before the ship departs port—also when the ship comes into port.

“Q. And did you do so on that day before leaving Seattle?      A. Yes, sir.

“Q. Was the propeller at rest or was the propeller turning?      A. She was turning.

“Q. By what means?

“A. The jacking gear.

“Q. And what, if anything, did you see?

“A. That all blades were all right with the exception of No. 4 blade, the tip was missing.

“Q. About how much of the tip was missing?

(Deposition of Otto K. Boltz.)

“A. I would say approximately from the dock side looking at it, 4 to 6 inches.

“Q. Was that a break or was it a parting or severing of some previous repair? [185]

“A. That had been previously tipped and damaged and had been brazed and polished.

“Q. And was the missing tip a break-off of the braze?

“A. Yes, showed definitely it was a break in the braze.

“Q. Was that an old damage?

“A. Yes, that was previous.

“Q. Could that in any way affect the efficiency of the propeller or the use of the engines?

“A. No, sir.

“Q. Was it of such a character as to require immediate repair? A. No.

“Q. How are the blades numbered?

“A. 1, 2, 3 and 4.

“Q. On the inspection previously to leaving Seattle which you described for us, what blade was the one which was previously damaged?

“A. No. 4 blade.

“Q. Did you also see Nos. 1, 2 and 3 blades at Seattle? A. Yes, sir.

“Q. Could you tell the Court what condition you observed on that date?

“A. Nos. 1, 2 and 3 blades was all right, there was no damage to those blades.

“Q. Did you see both the leading and trailing edges? [186] A. Yes, sir.



(Deposition of Otto K. Boltz.)

“Q. And the tips? A. They were O.K.

“Q. As the propeller blades were turning in the vertical position at Seattle by use of the jacking gear, about how much of the blades were out of the water, if at all?

“A. Well, according to the draft—the ship was light, and it must have been something between 16 and 18 feet draft by the stern at light draft.

“Q. How much of the propeller blades could you see?

“A. For a rough guess I would say I could see three to four feet at least.

“Q. Did you observe the conditions that you previously described to us? A. Yes, sir.

“Q. I show you a book and ask you what it is (handing to witness).

“A. That is the engine room rough logbook.”

Mr. Howard: Pardon me just a minute.

The Clerk: It will be Libelant's Exhibit 6.

(Engine room rough logbook was marked Libelant's Exhibit No. 6 for identification.)

Mr. Howard: Did you have a question to me, Mr. Biele?

(The reading of the deposition of Otto [187] K. Boltz was continued as follows:)

“Q. Is that kept in the regular course of business? A. Yes, sir.”

Mr. Howard: We offer Exhibit 6, your Honor.

The Court: Any objection?

(Deposition of Otto K. Boltz.)

Mr. Biele: No objection, your Honor.

The Court: It is admitted.

(Libelant's Exhibit No. 6 for identification was admitted in evidence.)

(The reading of the deposition of Otto K. Boltz was continued as follows:)

"Q. Is this book which you have identified as the rough engine logbook, Libelant's Exhibit 6 for identification, the book of original entry?

"A. Yes, sir.

"Q. Did you make any entry in your own handwriting or did you cause any entry to be made of the inspection made of the propeller at Seattle on January 10, 1957?

"A. That is made in my own handwriting.

"Q. What, if any, entry did you make? Will you please read it to us—that is before leaving Seattle.

A. (Reading): 'At 1545——' "

The Court: What page of this deposition are you reading from?

Mr. Howard: On Page 8 of the deposition, your [188] Honor.

The Court: "1545" is what you last read, is it not?

Mr. Howard: Yes, your Honor.

The Court: You may read the next question.

(The reading of the deposition of Otto K. Boltz was continued as follows:)

"Q. What date are you now reading from?

(Deposition of Otto K. Boltz.)

“A. That is dated January 10th.

“Q. At what port?

“A. At Seattle, Washington. (Reading): ‘At 1545 captain and chief mate and chief engineer inspected after end of vessel and propeller and No. 4 blade tip missing, no damage. O B.’

“Q. I show you another book and ask you what it is (handing to witness).

“A. That is the smooth engine room logbook.

“Q. I notice that there is attached to it white sheets. What are they?

“A. Those are engine room abstracts. They have the date on every trip made.

“Q. Does this book include the date of January 10, 1957?        A. Yes, sir.

“Q. Is it kept in the regular course of the ship’s business?

“A. Yes, but this is the smooth log—the voyage ended and [189] the other smooth log was started. This is from——

“Q. From January 6th to March 8th?

“A. That includes the 10th, yes.”

The Clerk: Libelant’s Exhibit No. 7.

(Engine room smooth logbook was marked Libelant’s Exhibit No. 7 for identification.)

The Court: Libelant’s Exhibit 7, is that right?

The Clerk: Yes, your Honor.

Mr. Howard: I offer Exhibit 7, your Honor.

Mr. Biele: No objection.

The Court: Admitted.

(Deposition of Otto K. Boltz.)

(Libelant's Exhibit No. 7 for identification was admitted in evidence.)

(The reading of the deposition of Otto K. Boltz was continued as follows:)

"Q. I show you another volume and ask you what that is (handing to witness).

"A. That is the engine room bell book.

"Q. Is that also kept in the regular course of business?        A. Yes, sir.

"Q. Does that include the engine movements for January 10, 1957?

"A. That is correct."

The Court: I cannot half the time find the [190] places in these depositions that do not have numbered lines. What page in the deposition and line did you last read from?

Mr. Howard: We just completed at the bottom of Page 9, your Honor.

The Court: You may proceed.

The Clerk: Libelant's Exhibit 8.

(Engine room bell book was marked Libelant's Exhibit No. 8 for identification.)

The Court: What is Libelant's Exhibit No. 7? Do Counsel know what it is? If so——

Mr. Howard: It is the smooth engine logbook.

The Court: That smooth engine room logbook is already Libelant's Exhibit 6.

Mr. Howard: That is the rough engine room log, your Honor.

(Deposition of Otto K. Boltz.)

The Court: It was stated it was the smooth engine room logbook. It is so stated—is that the one that is referred to in the first answer at the top of Page 8, the rough logbook?

Mr. Howard: Yes, your Honor.

The Court: Is that No. 6?

Mr. Howard: Yes, your Honor.

The Court: No. 7 is the smooth, is it?

Mr. Howard: Yes, your Honor. [191]

The Court: You may proceed. No. 8, you say, Mr. Clerk?

The Clerk: The engine bell book.

The Court: Is it marked No. 8?

The Clerk: Yes, your Honor.

The Court: Very well. What do you call that?

Mr. Howard: Engine bell book.

The Court: You may proceed. It is referred to on what page?

Mr. Howard: The top of Page 10. I offer Exhibit 8.

The Court: Any objection?

Mr. Biele: No, your Honor.

The Court: It is admitted.

(Libelant's Exhibit No. 8 for identification was admitted in evidence.)

(The reading of the deposition of Otto K. Boltz was continued as follows:)

“Q. Mr. Boltz, at any time you wish to refresh your recollection with either or any of these documents, do so. You are free to refer to them.



(Deposition of Otto K. Boltz.)

“A. All right, sir.

“Q. We are here concerned with the damage sustained by the propeller of the Cotton State at Everett, Washington, on the evening of January 10, 1957. Will you [192] describe for the Court the general appurtenances which are maintained on the Cotton State, including the date of January 10, 1957, with respect to warnings for other vessels or craft to keep clear of the propeller?

“A. When the ship is alongside the dock there is one bar lowered over each side on the after end of the stern, approximately 9 feet long, to which is a marine warning type light attached, and has a 60 to 75 bulb inside.

“Q. 60 to 75-watt?

“A. Yes, and the glass cover on the light is red.

“Q. What, if any, other signs did you have?

“A. This light flashes at intermittent seconds, three to four seconds, flashes red. On each side above on the handrail is a board mounted, approximately 5 feet long by 3 feet high, with the legend stating ‘Keep clear of propeller.’

“Q. Now, if I may particularize, we will start from the deck. You say you have a sign board 5 by 3 feet approximately. Does that face outboard?       A. Faces outboard, yes.

“Q. On each quarter?

“A. On the quarter, yes.

“Q. And where is it secured—to the railing?

“A. On the railing.

(Deposition of Otto K. Boltz.)

“Q. About what size are each of these letters ‘Keep clear [193] of propeller’?

“A. I would say offhand probably 5 to 6 inches.

“Q. What color is the board?

“A. As a rule the base is white and the color of the lettering is red, to make them stand out.

“Q. At nighttime is any illumination furnished for those boards you have described?

“A. Yes, on that ship they used to put a cluster light there.

“Q. And where is the cluster light placed with respect to the board?

“A. Over the railing shining onto the board.

“Q. You also stated that you had bars which were approximately 9 feet in length?

“A. Yes, sir.

“Q. How far were they lowered down above the water?

“A. I would say offhand they come down to the 30-foot mark level, and I would say they are anywhere from 5 to 6 feet above the water.

“Q. Is the bar colored? A. Yes.

“Q. What colors? A. White and red.

“Q. How are the colors set, varied on the bars, in sequence?

“A. Red, white—red, white. [194]

“Q. Are they divided into 3 feet for each color?

“A. No, on this ship it was more in white stripes, if I recall—red, white—red, white—all the way along the bar.

“Q. Is that laid fore and aft or athwartship?

(Deposition of Otto K. Boltz.)

“A. I am pretty sure about it.

“Q. On the passage from Seattle to Everett did your vessel use her main propelling machinery and steam?      A. Yes, sir.

“Q. During the docking maneuver at Everett where were you stationed?

“A. In the engine room.

“Q. In what part of the engine room?

“A. As a rule I am around the maneuvering platform.

“Q. Who else was in the engine room with you?

“A. Mr. Greene and Mr. Pilar.

“Q. What rank did Mr. Greene have?

“A. Mr. Greene was second assistant engineer at that time.

“Q. And Mr. Pilar? [197]

“A. Was the fourth assistant engineer.

“Q. In regular course when in port do you have any other engineers that report for duty?

“A. Yes, sir.

“Q. What are they known as?

“A. Mr. Garner, third assistant engineer, and Mr. Nelson, first assistant engineer.

“Q. I think you misunderstood my question. Do you have any other engineers that report on board for duty who are not regular engineering complement at sea?

“A. Oh, that was Mr. Kane.

“Q. What was his rank?

“A. Night relief engineer.

“Q. Was he a licensed engineer?

(Deposition of Otto K. Boltz.)

“A. Yes, sir.

“Q. Do you know what license he held, and for how long?

“A. Well, he had a chief’s license.

“Q. Was he an older man or a younger man?

“A. He was an older man.

“Q. Where were you when the engine telegraph was rung to finished with engines, as you have previously described, on arrival at Everett?

“A. I was in the engine room.

“Q. And when that telegraph signal was rung, what, if anything, did you do? [198]

“A. Then I left the engine room.

“Q. Before leaving did you give any instructions, or were any necessary?

“A. It was not necessary because after finished with engine is rung, then the main steam stop valves are shut off, closing the steam to the main engine.

“Q. Now, it is not an issue, but if I may lead a bit in the interest of brevity: The main steam turbines of the Cotton State are the horizontal shafts containing blades or buckets against which the steam is forced and the shaft rotates, is that correct?      A. Yes.

“Q. Does the steam pass into these turbines at a high temperature?      A. Yes, sir.

“Q. When you receive finished with engines as you did on this occasion, what is the regular engineering practice with respect to cooling the turbines?

“A. After the steam is shut off and the steam

(Deposition of Otto K. Boltz.)

lines are drained, the main steam lines are drained, the jacking gear is engaged to cool the steam turbines off, at least for two to three hours.

“Q. And is that necessary or just desirable?

“A. Absolutely necessary due to the high temperature.

“Q. Is it common knowledge among mariners, both engineers [199] and deck men, so far as your knowledge and experience goes, that that fact is known? A. That is correct.”

The Court: Pass that and go down to the question.

(The reading of the deposition of Otto K. Boltz was continued as follows:)

“Q. Why is it necessary to cool down the turbines by continued rotation by a jacking gear?

“A. If it was not done the rotor would probably warp or distort to such an extent that the turbine would not be able to be used the next time.

“Q. What causes that warping?

“A. The heat standing in one position, you know.

“Q. Unevenly distributed?

“A. That's right.

“Q. Will you explain to us what the jacking gear is, as fitted on the Cotton State?

“A. The jacking gear is a machine which is coupled up to the after end of the H P high speed pinion shaft. It consists of a worm gear and is more what we call a planetary gear.

“Q. By what power is the jacking gear driven?



(Deposition of Otto K. Boltz.)

“A. Electric power.

“Q. Electric motor? [200]                      A. Yes, sir.

“Q. Of what horsepower?

“A. About 7, 10 horse—in this particular case I believe it is 7½ horsepower.

“Q. And what amperage?

“A. The amperage as a rule is around between 35 and 40.

“Q. At what speed on the Cotton State with respect to revolutions of the propeller does the jacking gear turn the propeller?

“A. It takes about between seven and eight minutes to complete, for the propeller to complete one complete revolution.

“Q. How many sets of gearings between the worm drive on the jacking gear and the propeller and shaft itself is the power imparted to before reaching the propeller shaft?

“A. Including the gear and the jacking gear motor and the planetary gear on the high speed pinion shaft and the main turbine would consist of six sets. That is counting that in.

“Q. Six sets of gear through which the power is transmitted before it passes to the propeller shaft?                      A. Yes.

“Q. What, if any, devices for safety are there on the Cotton State with respect to the jacking gear for the [201] preservation of the reduction gearing?

“A. Every electric motor is fused to a certain amount of amperage in the event of overload that that fuse blow. Also there is an overload protection

(Deposition of Otto K. Boltz.)

device which in the event the motor is subjected to a heavy load, that means if something, great friction, would cause it, or the propeller would come against something, the motor would slow down, and naturally when the motor slows down the amperage would heat by this overload protection device, which consists of a strip of metal, of special alloy, which would expand and in turn trip the breaker.

“Q. The breaker switch?

“A. The breaker switch.

“Q. And what would that do with respect to the current to the motor driving the jacking gear?

“A. The switch would then open and the motor would be stopped.

“Q. On the Cotton State approximately what percentage of resistance would trip the moving contact to cut the current to the jacking gear or break the flow of current to the jacking gear?

“A. It would amount to about 125 per cent overload to activate this overload protection device.

“Q. On January 10, 1957, at Everett, Washington, as you [202] were leaving the engine room were the engineers engaged in doing anything with respect to the jacking gear?

“A. After I left the engine room?

“Q. As you were leaving the engine room.

“A. Yes.

“Q. What were they doing?

“A. Mr. Greene was getting ready to put the jacking gear in.

(Deposition of Otto K. Boltz.)

“Q. That is coupling the worm gearing to the high pinion?           A. That is correct.

“Q. In which direction does the jacking gear drive the propeller?

“A. In either direction.

“Q. Ahead or astern?

“A. Ahead or astern, either direction.

“Q. Do you know of your own knowledge in which direction the jacking gear was turned on January 10th?

“A. Yes, in reverse, counterclockwise.

“Q. After you left the engine room on finished with engines, and having seen what you described, where did you go?

“A. I went to my office.

“Q. And where is your office located?

“A. On the first deck above the main deck, the cabin deck.

“Q. And what, if anything, unusual occurred, if at all, when you got up there?

“A. After awhile Mr. Kane came up. [203]

“Q. After about how many minutes, in your best judgment?

“A. That is hard for me to say, I cannot remember the time, it wasn't too long, I know.

“Q. Mr. Kane, the night engineer, came up?

“A. Yes, and said the jacking gear motor stopped.

“Q. Had you seen or heard anything unusual at about that time?           A. Not then yet.

(Deposition of Otto K. Boltz.)

“Q. What, if anything, did you then hear or see?

“A. After being notified by the night engineer that the jacking gear motor stopped I told Mr. Greene to go down and have a look at it but not to turn her, to wait until we find out what the trouble seems to be.

“Q. Did Mr. Greene do that? A. Yes, sir.

“Q. And where did you go, if anywhere?

“A. At this particular time there was already a lot of people running around and hollering a barge drifted into the propeller, while I was telling Mr. Greene to go down to the engine room.

“Q. And from what part of the vessel was the hollering coming from?

“A. Well, a lot of people outside, from the outside on the starboard side, and people coming inside and saying a barge drifted in. [204]

“Q. The starboard side was the offshore side?

“A. That is correct.

“Q. What, if anything, did you do then?

“A. Then I went outside.

“Q. Where?

“A. On the starboard side midships.

“Q. What, if anything, did you see and what, if anything, did you do?

“A. I looked over the side and I seen a barge drifting off the stern, more offshore in the line with the stern, and I seen a lot of lumber in the water, a lot of boards floating around.

(Deposition of Otto K. Boltz.)

“Q. When you saw that, what, if anything, did you do?

“A. Well, by that time we knew that the barge had hit the propeller and then the captain, the chief mate and myself went down on the dock to determine how much damage there possibly was done to the propeller.

“Q. Going down on the starboard side what, if anything, did you see with respect to the warning signs you have previously described?

“A. One side of the warning light broke.

“Q. When you went down on the dock what, if anything, did you see?

“A. On the port side the warning light was in perfect order and the red light was flashing. [205]

“Q. Was the fore and aft bar down?

“A. The fore and aft bar was in position.

“Q. And was the notice board you have described lighted up? A. Yes, sir.

“Q. And from the dock what did you see, personally? A. Referring to the light?

“Q. No, referring to the propeller now.

“A. From the dock I seen that the trailing edges on the propeller blades were badly bent.

“Q. How many blades could you see at that time when you first went on the dock?

“A. About one out and one beginning to show.

“Q. Was the jacking gear again in motion?

“A. Then we put the jacking gear and turned the propeller.

“Q. And did you make complete use of the propeller by the jacking gear? A. Yes, sir.



(Deposition of Otto K. Boltz.)

“Q. Who was present then?

“A. The captain, the mate, myself and that’s about all.

“Q. Did you see all four blades?

“A. Yes, sir.

“Q. As they came above the water?

“A. Yes, sir.

“Q. What, if anything, did you observe with respect to those blades in company with the men you have described? [206]

“A. That was Nos. 1, 2 and 3 were badly bent on the trailing edge, and one was completely bent, the tip was bent down towards the hub.

“Q. That is the center of the propeller?

“A. Yes, sir.

“Q. Did you make any entry of the inspection you made in your logbook? A. Yes, sir.

“Q. I show you Exhibit 6. Will you identify for us by reading any entry that you personally made at the time?

“A. (Reading): ‘Propeller warning light and sign in place at 1845 Barge E-15 struck propeller and rudder while being pushed by tug Lea Moe to spot barge No. 25 at No. 5 hatch witness by chief mate’—that is Mr. McLaughlin I am referring to—‘immediate inspection was made by master, chief mate and chief engineer, starboard propeller warning board and light and cluster light broken extent of further damage subject to final survey. O B, chief engineer.’

“Q. Mr. Boltz, after you examined the propeller

(Deposition of Otto K. Boltz.)

you described for us, in company with those gentlemen, from the dock and made the observations you have also described for us, did you go over to the starboard quarter on the deck and examine the red flashing light, cluster light and board? [207]

“A. That is correct.

“Q. What did you personally observe?

“A. Well, that light was—the light bar was hanging down, one rope broken, the forward rope broken.

“Q. What about the red flashing light?

“A. The lights were out.

“Q. How was the connection—did you examine that?

“A. Because the electric cable was pulled out of the plug, was broken. We had to repair that.

“Q. And the cluster light? A. Was out.

“Q. And the warning board? A. Out.

“Q. Do you have any further entries pertaining to what you have described for us in your logbook?

“A. Yes. (Reading): ‘Inspected propeller in presence of Mr. Gallagher A B S, Commander Burgess, United States Coast Guard, captain of the ship and chief engineer, found No. 1, No. 2, No. 3 blades damaged to the extent requiring drydocking of vessel.’

“Q. What does ‘A B S’ stand for?

“A. American Bureau of Shipping.

“Q. Is that the Cotton State’s Classification society? A. Yes, sir.

“Q. From the damage you had seen, in your professional [208] opinion could the vessel have pro-

(Deposition of Otto K. Boltz.)

ceeded on her voyage without drydocking and replacing of the propeller?      A. No.

“Q. Did the vessel ultimately go to drydock?

“A. Yes, sir.

“Q. Where did she go to drydock?

“A. Back to Seattle.

“Q. Were you bound for Seattle in regular course or did you put in there specially for drydocking?      A. For drydocking.

“Q. With your vessel on drydock did you further inspect the propeller?      A. Yes, sir.

“Q. Were photographs taken?

“A. Yes, sir.

“Q. Were you present when the photographs were taken?

“A. Some of them, not all of them.

“Q. I show you a photograph and ask you what it is, from your own knowledge (handing to witness).

“A. That is No. 2 blade.”

The Clerk: Libelant's No. 9.

(A photograph was marked Libelant's Exhibit No. 9 for identification.)

Mr. Howard: The number on that, Mr. Bruff?

The Court: What is the clerk's number? [209]

The Clerk: 9, your Honor.

The Court: Libelant's Exhibit 9 marked for identification. What do you call it, if it has a name?

Mr. Howard: Photograph of No. 2 blade, propeller.

(Deposition of Otto K. Boltz.)

The Court: I have put what is intended to be an up and down double ended arrow marked on one end "Top" and the other "Bottom" so as to indicate. It probably is not done very well. It may be the wrong kind of mark from Counsel's standpoint. If it is, you may disregard it. It is the only way I could tell which way is the top and which is the bottom, from the heads in the lower part of the picture.

Mr. Howard: I think you've just got it reversed, your Honor.

The Court: If you turn it over, you will——

Mr. Howard: Oh. Well——

The Court: Better change it, I think. Mark out the place where I have "Top" and put "Bottom," will you, and put "Top" on the other.

Mr. Howard: All right.

(Mr. Howard writes on Libelant's Exhibit No. 9 for identification.)

Mr. Howard: Would you prefer to have it marked on the front side, your Honor? [210]

The Court: No, it is not necessary.

Mr. Howard: I offer Libelant's Exhibit No. 9.

The Court: Any objection?

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 9 for identification was admitted in evidence.)

(Deposition of Otto K. Boltz.)

(The reading of the deposition of Otto K. Boltz was continued as follows:)

“Q. This is blade No. 2, which is numbered on the blade in the photograph? A. Yes, sir.

“Q. I show you another photograph and I ask you if you can identify that as the time and place and what it shows (handing to witness).

“A. This is No. 1 blade, bent downward towards the hub on the starboard side.

“Q. Does that show the damage which you observed? A. Yes, sir.”

The Clerk: Libelant's Exhibit 10.

(A photograph was marked Libelant's Exhibit No. 10 for identification.)

The Court: Which one is damaged, the photo in No. 9 or the photo in No. 10?

Mr. Howard: Your Honor, each of these [211] photos will show a different view of the blade. This is No. 1 blade that is shown on No. 10.

The Court: Is this supposed to be damaged?

Mr. Howard: Yes, your Honor.

The Court: You may proceed.

Mr. Howard: The testimony is, “This is No. 1 blade, bent downward towards the hub on the starboard side.”

The Court: The preceding one was No. 4, was it, or not?

Mr. Howard: No. 2.



(Deposition of Otto K. Boltz.)

(The reading of the deposition of Otto K. Boltz was continued as follows:)

“Q. Does that show the damage which you observed?      A. Yes, sir.”

Mr Howard: I offer No. 10.

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 10 for identification was admitted in evidence.)

(The reading of the deposition of Otto K. Boltz was continued as follows:)

“Q. I show you another photograph and I ask you what that is (handing to witness).

“A. That is blade No. 3. [212]

“Q. Does that show the damage which you observed on drydock following the incident at Everett?      A. Yes, sir.”

The Clerk: It will be Libelant's Exhibit No. 11.

(A photograph was marked Libelant's Exhibit No. 11 for identification.)

Mr. Howard: No. 11 would be Blade 3, your Honor.

The Court: Do you offer it?

Mr. Howard: I offer that, your Honor.

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 11 for identification was admitted in evidence.)

(Deposition of Otto K. Boltz.)

(The reading of the deposition of Otto K. Boltz was continued as follows:)

“Q. I show you another photograph and ask you what that is.

“A. That is blade No. 3, I would say—no, it looks like No. 2—trailing edge badly bent.”

The Court: That is the second one of No. 2 then, is that right?

Mr. Howard: Yes, your Honor.

(The reading of the deposition of Otto K. Boltz was continued as follows:) [213]

“Q. Does that also depict the damage you previously described? A. Yes, sir.”

The Clerk: Libelant's Exhibit No. 12.

(A photograph was marked Libelant's Exhibit No. 12 for identification.)

Mr. Howard: I offer No. 12, your Honor.

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 12 for identification was admitted in evidence.)

(The reading continued as follows:)

“Q. I show you another photograph and ask you what that is. A. That is No. 2.

“Q. Does that also depict the damage you described for us?”

The Court: How many more of these do you wish?

(Deposition of Otto K. Boltz.)

Mr. Howard: Your Honor, there are three more that are identified.

The Court: All of No. 2?

Mr. Howard: I'll check.

The Court: Blade No. 2?

Mr. Howard: The next two are Blade 2 and the last one is Blade 1.

The Court: Are you sure it is needful to have all of these in? [214]

Mr. Howard: I would like to offer them. I'm willing to have them offered as a group, your Honor, the rest of them.

The Court: Let the last one mentioned be marked No. 13.

The Clerk: Libelant's Exhibit 13.

(A photograph was marked Libelant's Exhibit No. 13 for identification.)

Mr. Howard: Was there a question to me, Mr. Biele?

Mr. Biele: Yes.

(The reading continued as follows:)

"Q. Does that also depict the damage you described for us? A. Yes."

Mr. Howard: I offer No. 13.

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 13 for identification was admitted in evidence.)

(The reading continued as follows:)

(Deposition of Otto K. Boltz.)

“Q. You described on Exhibit 13 the photograph showing damaged blade No. 2 taken on the port side. I show you another photograph and ask you what blade that is, and taken on which side?

“A. That was taken from the port side. [215]

“Q. Starboard side or port side? Have another look at it.

“A. No, starboard side, in drydock.”

The Clerk: Libelant's 14.

(A photograph was marked Libelant's Exhibit No. 14 for identification.)

Mr. Howard: I offer No. 14, which is another view of Blade No. 2.

Mr. Biele: No objection.

The Court: Admitted.

(Libelant's Exhibit No. 14 for identification was admitted in evidence.)

(The reading continued as follows:)

“Q. I show you another photograph and ask you what that is?

“A. That is the starboard side, and that is showing No. 1 blade, facing.

“Q. Is No. 1 blade in the vertical position?

“A. Yes, sir—no, horizontal position.

“Q. Which blade is horizontal?

“A. No. 1, facing you.

“Q. What blade is in the vertical position?

“A. No. 2—you can't see No. 3.

(Deposition of Otto K. Boltz.)

“Q. I beg your pardon—vertical lower position is No. 2. What is the vertical upper position?”

“A. No. 4.

“Q. Does that photograph show any damage to No. 4 blade? [216]

“A. Yes, the tip is missing.

“Q. Was there any further damage to that propeller blade as you saw it on drydock following the incident at Everett?”

“A. No, it was the same as leaving Seattle.”

The Clerk: Libelant's Exhibit 15.

(A photograph was marked Libelant's Exhibit No. 15 for identification.)

Mr. Howard: That shows at the top, your Honor, the pre-existing damage to No. 4 blade. I offer that.

The Court: Is No. 15 relating to No. 4 and not No. 1?

Mr. Howard: The witness describes in identification No. 15 the position of Nos. 1, 2 and 4 blades, but particularly No. 4 blade.

The Court: So it relates to 1, 2, 3 and 4?

Mr. Howard: Right.

Mr. Biele: We have no objection to its admission.

Mr. Howard: I offered No. 15.

The Court: It is admitted, No. 15.

(Libelant's Exhibit No. 15 for identification was admitted in evidence.)



(Deposition of Otto K. Boltz.)

(The reading was continued as follows:) [217]

“Q. Now, when the Cotton State arrived at Everett, Washington, as you described for us, and berthed alongside of her pier, is there any different procedure used on the Cotton State with respect to the placement of warning apparatus and lights when you are finished with engines, as distinguished from what would be done to commence the engines or start up the engines again for the resumption of a voyage?

“A. Well, before starting up the jacking gear and getting the engine ready for sea, the bridge is notified and the mate on watch is sent aft to see there is no objects around the propeller, barges, boats or what have you, to see, in other words, that the propeller is clear.

“Q. Even though the signs are up?

“A. That's right.

“Q. When you dock what is done after shutting the steam off the engine?

“A. After shutting the steam off, the mate on watch—which in this case was Mr. McLaughlin, the chief mate. tying up the ship on the afterdeck, hangs over the propeller warning lights and the illumination for the propeller sign. Should be any obstruction there he would notify the engine room, so after when the ship is docked the jacking gear is put in to cool the main engine down for [218] at least two hours or longer.

“Q. How long can you leave the main turbines

(Deposition of Otto K. Boltz.)

at rest after closing off the main steam, without using the jacking gear to rotate the turbines for cooling without damaging the turbine?

“A. I wouldn’t wait more than three to four minutes.

“Q. Is that regular practice?           A. Yes, sir.

“Q. Your vessel ultimately went, as you described, to Seattle and drydocked?

“A. Yes, sir.

“Q. Is the time of going onto the drydock and coming off entered in your logbook, Libellant’s Exhibit 6?           A. Yes, sir.

“Q. What time did you arrive at the drydock in Seattle, and on what date?

“A. Ship on drydock at 0825.

“Q. What date?

“A. The 12th of January.”

Mr. Howard: Now, Counsel, the next several pages relate to damages. We have now stipulated to damages. I am willing on this examination by me of the witness to skip over the top of Page 34 where the cross-examination begins in the interests of saving time. [219]

The Court: Is that agreeable to you?

Mr. Biele: I’ll just give it a spot check, your Honor. I think it probably is, but just let me check.

(Brief pause.)

Mr. Biele: Cross-examination, your Honor.

Mr. Howard: Page 34.

The Court: You may proceed.

Mr. Biele: The top of Page 34.

The Court: Proceed.

(The reading was continued as follows:)

"Q. Was there any other work done in dry-dock other than what you have told Mr. Gerity?

"A. Not as far as I recall.

"Q. Is it your testimony that Mr. McLaughlin put out the light board and put the cluster light on at the stern of the ship?

"A. In this particular time. But every mate does that whoever is aft.

"Q. Is it your testimony that Mr. McLaughlin did it on this occasion?

"A. At this particular time he was there.

"Q. Did you see him put out the boards?

"A. No.

"Q. Did you see him put out the blinker light you spoke [220] about? A. No, sir.

"Q. Did you see him put the cluster light on?

"A. No, sir.

"Q. As I understand it, blade No. 4 was the same after the accident at Everett as it had been at Seattle?

"A. Yes, sir; we lost that tip.

"Q. But the condition was the same at Everett as at Seattle?

"A. As far as I could see it was.

"Q. When the jacking gear is in operation and you are in the engine room, if there is a strain on the jacking gear can the engineer tell that from any sound?

(Deposition of Otto K. Boltz.)

“A. I wouldn’t say so, because you got a big reduction gear there and that motor keeps on driving this gear and it turns so slowly you have to watch it closely, and if any strain was put on the motor would begin to be overloaded and eventually if the load wasn’t taken off, the overvoltage protection device or a fuse would blow.

“Q. You say the shaft turns very slowly?

“A. Very slowly.

“Q. The engine does not turn very slowly, however, does it?

“A. Well, the only thing that turns fast is the turbine itself—I mean you can see it turning. It is not so that you can see the shaft turn.

“Q. I am speaking about the jacking gear—that turns [221] rapidly, does it?

“A. Yes; it turns fast.

“Q. If there is a strain or overload on the propeller or on the jacking gear, doesn’t the engine start to slow up?

“A. That is something you can’t determine because by that time it is too late because the shaft is barely moving in any event.

“Q. Am I correct then that it is your testimony that if an engineer is in the engine room and the jacking gear is overloaded, that the engine will either kick out of the fuse or on the circuit breaker?

“A. On the overload device.

“Q. On the overload device, before the engineer could stop it?

“A. Well, the men don’t stay right by the jack-

(Deposition of Otto K. Boltz.)

ing gear because they have other duties to perform. You don't have a man standing by there, that is not the practice that a man stands right by the jacking gear.

"Q. If a man was standing by the jacking gear, can he turn it off before it would kick out?

"A. No; in this particular instance he would have to run over to the starting box, which was not by the engine on this particular ship.

"Q. When you were testifying about the various warning [222] devices as to the propeller, and referring to them as on the hull, they are not kept in position when the ship is under way, are they?

"A. Oh, no.

"Q. So on your voyage from Seattle to Everett they would not be over the side, is that correct?

"A. That's correct, you have nothing over the side when you are under way.

"Q. And it was only when you got to Everett, Washington, that they would be put over the side, is that correct?      A. That's correct.

"Q. When I am talking about this I am talking about all these warning devices.

"A. That's correct.

"Mr. Gerity: Every single one of them?

"Q. Every single one of them, is that right?

"A. That's correct.

"Q. In your testimony and in your logbook you have spoken about the warning board being put over the side, is that right?      A. Yes.



(Deposition of Otto K. Boltz.)

“Q. You have testified you did not put it over yourself?

“A. No; it isn't my business to put them over.

“Q. And you didn't? A. No. [223]

“Q. And, as I understood your testimony, you were not back to the stern of the ship until after the jacking gear had kicked out, is that right?

“A. That is what I have stated.

“Q. So you have no personal knowledge yourself whether that warning board was over or not prior to the accident?

“A. That is correct.

“Q. And you have no personal knowledge as to whether the blinking light was blinking prior to the accident? A. That is correct, too.

“Q. And you have no personal knowledge whether the cluster light was on prior to the accident? A. That's right.

“Q. In other words, you have no personal knowledge about any of these warning devices?

“A. No; I never claimed to have.

“Q. I just want to make it clear.

“Mr. Gerity: You are now speaking of before the accident?

“Q. I am speaking of prior to the accident.

“A. After docking?

“Q. Yes, but prior to the accident?

“A. That is correct.

“Q. I notice in your log, Libelant's Exhibit 6, that although you have described an inspection of the [224] propeller at Seattle and have described

(Deposition of Otto K. Boltz.)

some damage to blade No. 4, you have not indicated the extent of that damage, is that right?

“A. That’s right—where is that? (Referring to log.) Well, here, the blade tip missing (indicating).

“Q. Now, is my recollection correct that you estimated there was 4 to 6 inches of the blade missing?

“A. Yes—well, that is not only my estimation, it is the other people’s, too, that was with me.

“Q. When you made that inspection where were you and the other people?

“A. On the dock. That is the only time we can do it when we make our regular inspection. The propeller is always”——

Mr. Howard: I think the word should be “viewed.”

“A. ——the dock, the stern is always off the dock. For any person to say definitely a fixed measurement is always approximate because you are anywhere from 10 to 15 feet away in a lot of cases.”

The Court: Just a moment. Right there on Page 38, the third line from the bottom, do you agree that inadvertently there is omitted “viewed from”? Do you agree?

Mr. Biele: Your Honor, I have no—let me [225] see here a minute.

The Court: Mr. Howard says that is an obvious omission.

Mr. Biele: I can’t agree to that, your Honor. That’s just the way I received it and there has been no correction made on that.

(Deposition of Otto K. Boltz.)

Mr. Howard: I believe——

The Court: You may proceed.

Mr. Howard: I wrote Mr. Biele a letter outlining these corrections which should be made and received no response.

Mr. Biele: There is no correction on Page 38, your Honor. I refer to your letter.

The Court: Proceed. Page 39.

(The reading was continued as follows:)

“Q. And the captain and chief mate were also standing on the dock? A. That’s correct.

“Q. Now, if the extent of the missing portion of the propeller blade had been 14 or 16 inches, would that have required repairs before setting out on a sea voyage? A. I wouldn’t say no.

“Q. Do you know what the beam of the Cotton State is?

“A. Yes; something between 62—something like that, I will [226] say offhand.

“Q. And when you speak of the diameter of the propeller as 19 feet 6 inches, that is from the tip of one blade all the way through the center and to the tip of the other blade?

“A. That is correct.

“Q. Do you know what the length of the Cotton State is?

“A. Well, it is 450 feet, something like that.

“Q. Do you recall how far it was from the forward part of the house to the stern on the Cotton State?

(Deposition of Otto K. Boltz.)

“A. Well, as a rule the midship house is always placed closely to the center line of the ship not quite—but a rough guess I would say maybe 200 feet.

“Q. Are you speaking from the after part of the house or the forward part?

“A. I am speaking of the fore part where the door comes out of the deck, it being only one door in the midship house on the Cotton State.

“Q. Referring again to Exhibit 6, and particularly to the entry commencing 1545, when did you insert that entry in your logbook?

“A. Soon after the inspection—that is what we do.

“Q. Do you remember on this day when you did it?

“A. Well, we always go on the dock, that is the standard procedure, that is what we have to do, that is a company [227] ruling, we have to inspect the propeller leaving and coming in, going out and coming in.

“Q. I am asking you when you made the entry?

“A. I have to refer to the book.

“Q. Referring to the book can you tell me when you put this entry, 1545, in the book?

“A. (Referring to book): It was the day we inspected it.

“Q. What time of the day, if you remember?

“A. Well, right after docking.

“Q. No, Chief. You say you made the entry after docking?

(Deposition of Otto K. Boltz.)

“A. Yes; when we go on the dock when the mate is finished with engines, then the mate and myself go on the dock and they put it in the deck log and I put it in the engine log.

“Mr. Gerity: I suggest that the log be shown to the witness. He is asking you, when was that entry physically written in the book, and in what port?

“The Witness: That was in Everett, Washington.

“Mr. Gerity: 1545?

“The Witness: No; that was in Seattle, wasn't it?

“Mr. Gerity: That is what he is asking you.

“Q. When did you make that, in Seattle?

“A. Soon after inspection. We always make the inspection [228] just before departure, as a rule anywhere from thirty minutes to an hour.

“Q. After you made that inspection did you go to your room or did you go down to the engine room to get ready to get under way?

“A. As a rule when standby is rung and the ship leaves the dock, then I always go in the engine room, docking and undocking. That is a standard procedure for the chief engineer.

“Q. When was standby engine on January 10, 1957?      A. Standby was rung at 1557.

“Q. Well, now, when standby was rung did you go to the engine room on this particular day?

“A. Yes; I am sure I did.



(Deposition of Otto K. Boltz.)

“Q. How would you know that standby was rung?

“A. Because the telegraph shows you standby.

“Q. You have a telegraph in your room?

“A. No, but the engineer on watch always notifies me when the telegraph is on standby.

“Q. So on this day the engineer notified you when standby was rung?

“A. They always do, yes.

“Q. And at 1557 it is your recollection you went down below? A. That is the official time.

“Q. And that is your recollection as to when you went below? [229] A. That's right.

“Q. And did you put this entry, 1545?

“A. It must be, it is my handwriting.

“Q. Did you put this entry in the log before you went to the engine room at 1557, or did you put that in after you had come up from the engine room?

“A. No; I must have put it before in, because I can't put it in after, because the inspection takes place whenever the gangway is in.

“Q. I am not referring to when you made the inspection. I am referring to when you wrote that in the book.

“A. I can't remember that; I won't state no definite time.

“Q. Referring to the same logbook—and I am referring to the entry on the side of the page, 'Propeller warning light,' and so forth, when did you put that entry in the log?

(Deposition of Otto K. Boltz.)

“A. The moment after we examined the accident to the propeller I wrote it in. That was after the accident happened.

“Q. If I express it correctly, I think you mean you went down and looked at the propeller from the dock?      A. Definitely.

“Q. And then you went to the stern of the ship?

“A. Right.

“Q. And then you went and made that entry in the logbook, [230] is that correct?

“A. That is correct.

“Q. And in the interim you had discussed this matter with the other members of the ship's personnel?

“A. No; I did not discuss it with the other members of the ship's personnel, because there was a night engineer there, and I don't discuss things with the fireman and oiler.

“Q. Referring to that entry, and particularly the first part of it, 'Propeller warning light and sign in place'——      A. That is correct.

“Q. Now, you don't know whether the propeller warning lights and signs were in place prior to the accident or not, do you?      A. Yes.

“Q. Did you put it in place?      A. No.

“Q. And you did not see it in place?

“A. No.

“Q. And you say you know it was because someone told you it was?

“A. Yes, because every watch inspects the propeller sign on that particular ship, we had a ruling that every watch looks at the propeller sign and

(Deposition of Otto K. Boltz.)

sees it is in [231] place, and it is logged in the rough engine room log.

“Q. When you say on every watch, you mean by someone in the engine room?

“A. That’s right. Even Mr. Kane wrote it in his hand. It is always in the logbook—that is why I know it was in place.

“Q. Will you show me in the logbook any place where the engineer inspects the warning lights prior to the accident?

“A. That I don’t know, but the engineer logged it.

“Q. Will you show me any place where it is logged?

“A. I never claimed that; I just said it is inspected and the engineer logged it, and when he logs it he must be satisfied that the light is in place.

“Q. Please look at the Exhibit 6 and show me any place where there is any entry by an engineer showing the lights were in position prior to the accident.”

The Court: Can you not skip down to the answer?

(The reading continued as follows:)

“A. All right, January 10th is signed here by Mr. Kane (referring to logbook): ‘Red light and warning sign in place on the stern.’ Signed by Mr. Thomas Kane.

“Q. Referring to the time of that entry, isn’t

(Deposition of Otto K. Boltz.)

it correct that that entry is shown at 10:00 p.m.? [232]

“A. Well, of course, we had it all repaired, we repaired the light and put it back in service again.

“Q. What I would like you to do, Chief, is to point out any entry in Exhibit 6 showing that any engineer logged that that light was out prior to the accident?

“Mr. Gerity: The light was out?

“Mr. Hanrahan: The light was in position.

“A. That is something I don't know, because it is little things, you know, because the light—I don't write this logbook, that is not the engineer supposed to write. It must be in the deck log for sure because that is the people that put the bar over. (Indicating in logbook.)”

The Court: I think he will stop here. There are twenty or so more pages to read. Be sure to remind me of this Friday.

Mr. Howard: It is Page 46, your Honor.

The Court: Page 46.

Mr. Howard: At the top.

The Court: All those connected with this case are excused until Friday morning, day after tomorrow, at 10:00 o'clock in the forenoon.

(Thereupon, at 4:50 o'clock p.m., a recess herein was taken until 10:00 o'clock a.m., Friday, November 28, 1958.) [233]

November 28, 1958—10:05 o'Clock A.M.

(All parties present as before.)

The Court: I wish to speak to Counsel about one or two matters before we proceed. I have been very fortunate in having a convenient time to consider your trial briefs and the pretrial order since we last were working in open court, and I notice a supplemental memorandum consisting of three numbered pages which I have not read just now filed, but I want to ask each side if you have undertaken to find and have not any authorities, either statutes or court decisions, on the question of the right of the owner of the tow to receive relief or as to the duty of that owner as the same may be affected by the negligence or non-negligence of the tug towing that tow.

I do not see any authorities cited by either of you on that question and maybe you do not in fact raise that question—no, I will take that back. Mr. Biele has raised it in his stated comments which I would interpret as argument in his trial brief, but I do not recall his citing any comparable decisions on the matter at all.

Mr. Howard, do you intend any of these authorities cited in your trial brief to throw any [234] light on that question? I did not see any of them appearing to be so, nor do I see any raising any question about that especially.

Is there any contention between these litigants, any of them, as to whether or not, irrespective of the lawful right of the tug. that the owner of the



tow is not in any way affected by that, taking in that connection the point of view, if it does—I am just inquiring—that the tow is an independent entity and not without restriction of its rights by the negligence of the tug nor without in any way having its duties in the matter depend upon the fault or nonfault of the tug? Do you raise any question about that?

Mr. Howard: Well, your Honor, it is our position that, having sued both the tug and the barge to recover for the damages to the vessel, that now that there is a cross-libel filed which cross-libel is asserted by attorneys representing both the tug and barge interests, that is Mr. Biele and Mr. Crutcher, that all issues are submitted to your Honor; that is, whether there is fault of the barge, whether there is fault of the tug, whether there is fault of the ship, and that the determination of the liability would be complete as between all three parties. It is true that the cross-libel which was asserted by the barge [235] was asserted against the ship only, but I think that is for obvious reasons because the same attorneys that represent the barge also represent the tug and they are certainly not going to cross-libel against their own interests.

The Court: That may well be, but the Court has to look at the litigant and not Counsel. That might be subject to a humorous comment but maybe I better not indulge that. The Court has to look at the rights of the litigants always and not as limited too much by such trial procedures as the

rules and laws of evidence and things like that may otherwise provide.

Mr. Howard: If there is any question in the Court's mind about that we ask leave at this time to amend.

The Court: Mr. Howard——

Mr. Howard: To assert a cross-claim against the tug for any liability which we might have to the barge interests, but we are all in the case already.

The Court: I am not talking about the trouble of the Court raising questions Counsel are not interested in and I am not talking about questions so raised and the Court's trouble with them. I am trying to find out what you are raising in that respect, if anything. I do not know what your position is because I have not [236] seen it and I do not know whether you are ever going to have a position on it or not. Maybe you would rather not say. Maybe you do not want to say anything until you get up to the appellate court, I do not know. The Court has no right to require it that I know of, and I just want to know what it is at this time, your attitude on that.

Mr. Howard: Well, our attitude, your Honor, is simply this. that all parties are before the Court and all claims are before the Court, and if there were basis for the Court to find mutual fault or fault on the part of more than one of the parties, then there would be a division of the damages in accordance with the mutual fault doctrine.

The Court: Do you intend to try to help the

Court solve that question, or do you not? I will put it that way.

Mr. Howard: I'll do anything I can to help the Court solve it, your Honor.

The Court: It may be that your position calls for you not doing so. I do not find any cases cited by you for that specific purpose. You may later claim that some of them do involve information or rulings upon this question that I asked you do you raise. I do not know, but I do not see anything in your brief said [237] about the question at all. Do you intend to? Have I overlooked it?

Mr. Howard: Well, your Honor, we intended to submit the case on the basis of the issues in the pretrial order which I have set forth here, and I'd like to refer to those, if I may.

The Court: I am really not concerned about the others now, because that involves argument and taking up time explaining your whole position in the case. I am not interested in that. You have already made your opening statement. Since the evidence has gotten to this stage in connection with the libelant's case in chief, I just merely want to ask you now, have you intended to raise that question?

Mr. Howard: Yes, your Honor. It is raised, I believe, by our last issue of law.

The Court: State it.

Mr. Howard: "Should the cross-libelant recover the full amount of its damages from the libelant and cross-respondent?"

The Court: Yes. I am talking about your brief.

Have you given any attention to it in your brief or intended that your brief be so regarded?

Mr. Howard: Only to the extent that the brief does contain one or two cases including a case [238] from the Supreme Court of the United States where in a similar situation the Court held both the owner of the tug and the owner of the barge at fault in a case where the barge did not carry proper lights.

The Court: But it did not say that the barge could not have been held so unless the tug was held so and it did not hold that the barge was liable even though the tug was not or that the owner of the barge could recover for its losses even though its tug was the most negligent actor in the transaction that was the accident. It does not say anything like that. That is what is here the subject of inquiry.

Is there any right which may be lurking in the record or right out in plain open view, as you said is true as to the contentions but not as to your brief? Do you contend that if the tug was negligent the law presumes or imputes to the barge owner that it also was negligent on the doctrine of agency or some other doctrine and therefore that the owner of the tow or barge cannot recover against the owner of the tug if the Court should find and conclude that the tug was negligent in some way?

Mr. Howard: Not at all, your Honor. We contend that the owner of the barge can recover against the tug if the tug is negligent. [239]

The Court: No; I am not asking about recovery against the tug. Against the libelant.

Mr. Howard: I misunderstood your Honor.

The Court: I probably did misspeak myself. I understand the owner of the barge asks for its damages against the libelant.

Mr. Howard: Well, we contend, your Honor——

The Court: It does not ask any damages against the tug, as you pointed out a moment ago.

Mr. Howard: We contend that if on the claim of the barge to recover its damages, if it should be found by the Court that both the tug and the ship, the Cotton State, were at fault and that fault was the proximate cause of the accident, then there would be a division of the damages.

The Court: Do you intend that some case that you have in your trial brief shall be authority for your position on that point? That is the real question that I ask you.

Mr. Howard: I don't believe I have a case in my brief on that, but I would like to reserve the right to try and——

The Court: I did not see any statement in your brief that you were treating of that subject at all. I wish you would do that. [240]

Mr. Howard: I will as soon as I can, your Honor.

The Court: Now, I would like to know what your cases are, Mr. Biele, that support your position which you stated in your brief that the owner of the barge was not to blame here and, therefore, there is no reason why it should not, no matter



about the tug, recover against the libelant for its sustained damages even if the tug was negligent as stated by libelant.

Mr. Biele: Your Honor, our position is that the tug was towing a dumb tow in this case and that the tug, or the tow and the tug's owner were completely innocent of any wrongdoing.

In the event that the Court should find that there was fault on the tug, that would allow the scow owner to recover from the tug or the tug's owner.

In the event that the Court should find that there was negligence on the part of the ship, the scow owner could recover from the ship.

In the event that the Court should find that there was negligence on both the tug and the ship, the scow could then recover from both under the mutual—both the ship and the tug would pay half the damages under the mutual fault doctrine.

The Court: Have you cited any authority [241] for any of those propositions? What the Court is trying to find out from you, you may just forget everything except this: Supposing the tug was the only actor that was negligent in this case. Then obviously the owner of the barge would not have any right of action against anybody, would he?

Mr. Biele: I think he would have an action against the tug, your Honor, if the tug were negligent alone. If the ship were negligent alone, it would have an action against the ship alone.

The Court: Very well, then that is the answer to the Court's last stated question. But suppose

the ship were not negligent and the tug was. Would it have an action against its own agent, the tug?

Mr. Biele: Under these circumstances, your Honor?

The Court: Yes. I don't mean these circumstances any more than——

Mr. Biele: The Court would have to find fault on the tug in some way. If there was no fault on the tug there would be no recovery against the tug, but if the Court were to find that there was some negligence on the part——

The Court: Suppose both the tug and the moored ship were negligent, were mutually at fault; [242] would the owner of the barge or the tow have a right of action against each without any diminution in respect to its right of action against the moored ship on account of any negligence of its tug?

Mr. Biele: Yes, your Honor, it would, and under the mutual fault doctrine the ship and the tug then would have to——

The Court: With respect to the question of the negligence of the tug and what effect it has upon the right of the barge owner, is this a case of imputed negligence generally?

Mr. Biele: No, your Honor.

The Court: From principal to agent or from agent to principal?

Mr. Biele: I don't think so, your Honor, no.

The Court: Have you anything in your brief to support your thought on that matter?

Mr. Biele: I think my last conclusions——

The Court: That is your stated conclusion?

Mr. Biele: Yes, your Honor.

The Court: I am aware of that and I am trying to find out, is there any case in your brief or do you know of any or do you intend to let the Court have the benefit of any which supports that contention on your part? That is what I am trying to bring to your [243] attention at this stage to let you know that I am interested in what effect the tug's negligence, if the Court should find there was any, has on the right of the barge to recover in this case against somebody? That is what I want to know.

Mr. Biele: Your Honor, I think I have a case or two in mind. I don't have the citations in mind but I think I can probably get those to your Honor on that point.

The Court: Then let us leave this subject. There is another subject.

Mr. Howard: May I just have one word there, your Honor? I would like to say that I agree with the propositions which Mr. Biele stated to your Honor as far as his contentions are concerned.

The Court: Let me have some authorities on the right and the duty of that barge with respect to each and all the issues in this case.

Mr. Howard: Very well, your Honor.

The Court: The other question is addressed principally to Mr. Howard. I have noted your old cases in 54 and 52 of Federal Reporter, and I find that the one in 54 on which you seem to heavily rely did not, according to my understanding of the

report of that case, involve a situation as to the lines of the moored [244] ship being put out to the moving vessel, that is the position of those lines as they were in in the case at bar.

In the cited case, the City of New York case, decided in 1893 in the Second Circuit and reported in Volume 54 of Federal Reporter beginning at Page 181, from the syllabus in particular it appears that the lines from the moored ship to the moving tug had not been made fast onto the tug and that the tug in all respects was free and moving so far as any physical control from the ship was concerned. Now that does not prove a thing here, does it, because these lines were fixed?

Mr. Howard: Well, it doesn't prove a thing on the line, your Honor, but it does prove a lot as far as the position that the tug took.

The Court: The rest of it may be fine and dandy, but I want to know if you have any case or expect to let the Court have any where we have a factual situation respecting the putting out by the moored vessel of the lines already and tying them up on the tug or the barge already before the accident happened had upon the fault or negligence of the so-called moving vessel. That is what I wish to know, and any light you can give the Court now or hereafter I would need very [245] badly, Mr. Howard.

Mr. Howard: I would like to call your Honor's attention to the Hektor case cited on Page 9 of the brief.

The Court: What is the citation of it? Give me the volume and page number.

Mr. Howard: It's in 1935, A. M. C. 336.

The Court: Can you give it to me in the Federal, please?

Mr. Howard: I'm sorry, your Honor, it is not published in the Federal Reporter.

The Court: I have the A. M. C. but I do not like to read it because it is very hard to read.

Mr. Howard: Well, I've looked for this case in the Federal and it's not published in the Federal, but it is in the——

The Court: 1935?

Mr. Howard: 1935 A. M. C. 336.

The Court: 336, Hektor, is that right?

Mr. Howard: Yes, your Honor.

The Court: What do you state as to the lines?

Mr. Howard: In that case, if my recollection serves me correctly, the scow or barge in that case was secured by lines to the ship at the time the accident happened. [246]

The Court: That might be of great help, much more than the 54 Federal 181 case.

Mr. Howard: And there may be others. I'm just scanning through here now to see if I can locate any others of that type. I believe that the case in 52 Federal at the bottom of Page 11 of the brief——

The Court: I have it. Do you have it with you?

Mr. Howard: I don't have it with me, no, your Honor.

The Court: Page 1 what?

Mr. Howard: 174.